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ABSTRACT

A comprehensive analysis of statutes and regulations on consumer deception administered by thirty government agencies is provided in this report. Each agency's chapter includes a brief description of the agency, and a detailed listing of all deceptive trade practices prohibited by that agency's enabling legislation, regulations, or other sources of legal authority. Corresponding to each prohibited practice is a description of the remedies (administrative, civil, criminal, private, and other) available to enforce that proscription. Legal citations are provided as authority for each listed practice and remedy. Some of the thirty agencies described are the following: Department of Agriculture: Civil Service Commission: Department of Commerce: Consumer Product Safety Commission: Environmental Protection Agency: Federal Trade Commission: Food & Drug Administration: Department of Health, Education & Welfare: Department of Labor: National Credit Union Administration: Department of The Treasury: United States Postal Service. The last chapter describes additional federal prohibitions not associated with particular agencies. The appendix summarizes the consumer protection responsibilities of an additional nine federal agencies. (JH)

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# Federal Law on Consumer Deception: An Agency by Agency Analysis

by
George J. Zweibel

June 1979

U. S. Department of Justice
Law Enforcement Assistance Administration
National Institute of Law Enforcement and Criminal Justice

CE 022 550

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*Sheldon, J., & Zweibel, G. Survey of Consumer Fraud Law. Washington, D.C.: U.S. Government Printing Office, June 1978.

## INTRODUCTION

This report analyzes statutes and regulations on consumer deception administered by federal government agencies. It is a technical research document, providing detailed citations to authority relied upon, and consequently, is primarily a reference tool.

A summary version of this report, found in Sheldon, J. and Zweibel, G., Survey of Consumer Fraud Law (Washington, D.C.: U.S. Government Printing Office, June 1978, Section IV C), provides a more general description appropriate for most lay readers. In addition, this document is one of a series of reports produced in a joint research project of the American Institutes for Research and the National Consumer Law Center. Other reports describe state, local and foreign consumer fraud laws, evaluate the effectiveness of enforcement strategies, analyze the characteristics, incidence and impact of consumer fraud, and identify promising intervention strategies.

This report is a comprehensive federal agency-by-agency analysis, organizing the compilation of deceptive trade practice law around the individual federal agencies most associated with that law. Statutes enforced by more than one agency are cross-referenced or listed under each agency. Thirty federal agencies are included in the report; an additional chapter contains miscellaneous federal prohibitions not associated with particular agencies; the appendix summarizes the consumer protection responsibilities of an additional nine federal agencies.

The report's chapter on the Federal Trade Commission, while relatively lengthy, remains summary in nature and less exhaustive than chapters on other agencies. Other secondary sources analyze the extensive case law interpreting Section Five of the Federal Trade Commission Act that prohibits unfair or deceptive acts in commerce. This document focuses on the numerous other federal statutes and regulations preventing deceptive trade practices.

Agencies included in this study were provided drafts of the respective chapter pertaining to each agency. The numerous and detailed responses substantially added to the accuracy and completeness of this document. Nevertheless, only limited research for this report was conducted after early 1978.

Each agency's chapter includes a brief description of the agency, the year it commenced operation, and a summary of prohibited trade practices and available remedies associated with that agency. This introduction is followed by a detailed listing of all deceptive trade practices prohibited by that agency's enabling legislation, regulations, or other sources of legal authority. Corresponding to each prohibited practice is an enumeration of the remedies available to enforce that proscription. Remedies are categorized as administrative, civil, criminal, private and other. Civil and criminal remedies are normally enforced by the Department of Justice. Legal citations are provided as authority for each listed practice and remedy.

The index is alphabetically ordered by subject area, allowing access to specific sections of individual agency chapters. For example, "Overcharges, Educational Institutions," references sections on the Department of Health, Education and Welfare and the Veterans Administration.

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## I. DEPARTMENT OF AGRICULTURE (1862)

The Department of Agriculture (USDA) is a highly decentralized cabinet level department that performs a wide variety of functions.1/ The USDA's Agricultural Marketing Service grades, inspects, and certifies agricultural products to insure quality in the nation's food supply.2/ The USDA also provides technological and other aid to farmers, conserves forest and land resources, facilitates the obtaining of rural credit,3/ and fosters rural development.

The USDA administers a number of different statutes dealing with specific product areas, including meat, poultry, eggs, fruits, vegetables, grain, and seeds. These acts commonly regulate labeling, advertising,4/ and marketing of covered products.

The USDA's Food and Nutrition Service administers various food assistance programs targeted at alleviating hunger and malnutrition by providing food stamps and donating food to those in need. 5/

| Prohibited Practices | Remedies |
|---|---|
| **A. Meat 6/ and Poultry Products 7/** | |
| 1. Preparation, sale, delivery, transportation, offer for sale or transportation, receipt for transportation, or importation, in commerce, of adulterated 8/ or misbranded 9/ products. [21 U.S.C. §§458(a)(1),(2), 466(a), 610(a),(b), 620(a)] | Administrative: If imported, denial of entry at customhouse, possible destruction [21 U.S.C. §§466(b), 620(b)]; Denial of USDA inspection service [21 U.S.C. §§467, 671]; Detention of products pending civil condemnation proceedings [21 U.S.C. §§467a, 672]<br><br>Civil: Enjoin violations [21 U.S.C. §§467c, 674]; Seizure and condemnation [21 U.S.C. §§467b, 673]<br><br>Criminal: $1,000/one year; If intent to defraud or attempt to distribute product known to be adulterated--$10,000/three years 10/ [21 U.S.C. §§461(a), 676] |

| | |
|---|---|
| 2. Doing any act, while products are being transported or held for sale, which is intended to cause or has the effect of causing products to be adulterated or misbranded. [21 U.S.C. §§458(a)(3), 610(c)] | Same as #1 |
| 3. Use of false, deceptive, or misleading labeling, including offering products for sale under the names of other products, imitating the labels of other products, suggesting products are for special dietary use, or deceptive or unauthorized use of USDA stamps or labels. [21 U.S.C. §§453(h)(1)-(3), (10), 457(a),(c), 458(a)-(c), 601(n)(1)-(3), (10), 607(d), 610(b)] | Same as #1 |
| 4. Engaging in deceptive practices concerning the filling of packages or use of misleading containers. [21 U.S.C. §§453(h)(4),(8),(12), 457(a),(c), 458(a), 601(n)(4), (8), 607(d), 610(b)] | Same as #1 |
| 5. Failure to include prescribed information on labels, including disclosures that products contain artificial flavoring, coloring, or chemical preservatives. [21 U.S.C. §§453(h)(5),(7),(11), (12), 457(a), 458(a), 601(n)(5),(7), (11), (12), 607(d), 610(b)] | Same as #1 |
| 6. Failure to disclose prescribed label information to the required degree of conspicuousness. [21 U.S.C. §§453(h)(6), 457(a), 458(a), 601(n)(6), 607(d), 610(b)] | Same as #1 |

| | | |
|---|---|---|
| 7. | Engaging by packers in unfair or deceptive acts or practices. 11/ | Administrative: Cease and desist order [7 U.S.C. §193(b)]; All powers usually exercised by the Federal Trade Commission 12/ [7 U.S.C. §222]; Civil penalty to $10,000 per violation [7 U.S.C. §193(b)] |
| 8. | Violation by packers of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts. 13/ [15 U.S.C. §1607(a)(5)] | Administrative: All powers usually exercised by the USDA [7 U.S.C. §1607(b)]<br><br>Criminal, Private: See Federal Reserve System, #A1 |
| 9. | Violation by packers of the Fair Credit Reporting Act. 14/ [15 U.S.C. §1681s(b)(5)] | Administrative: All powers usually exercised by the USDA [15 U.S.C. §1681s(c)]<br><br>Criminal, Private: See Federal Reserve System, #B1 |
| 10. | Violation by packers of the Equal Credit Opportunity Act. 15/ [15 U.S.C. §1691c(a)(6)] | Administrative: All powers usually exercised by the USDA [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |
| 11. | Violation by packers of the Fair Debt Collection Practices Act. 16/ [15 U.S.C. §1692 1(b)(6)] | Administrative, Civil, Criminal: All authority conferred on the USDA by any law, except the promulgation of regulations [15 U.S.C. §1692 1(c)]<br><br>Private: See Federal Trade Commission, #I1 |

B. Egg Products 17/

| | | |
|---|---|---|
| 1. | Preparation, delivery, importation, or receipt of adulterated 18/or misbranded 19/ products. [21 U.S.C. §§1034, 1037(a), (b), 1046(a)] | Administrative: If imported, denial of entry at customhouse, possible destruction. [21 U.S.C. §1046(b)]; Denial of USDA inspection service [21 U.S.C. §1047]; Detention of products pending civil condemnation proceedings [21 U.S.C. §1048] |

| | | |
|---|---|---|
| | | Civil: Enjoin violations [21 U.S.C. §1050]; Seizure and condemnation [21 U.S.C. §1049]<br><br>Criminal: $1,000/one year; If intent to defraud or attempt to distribute product known to be adulterated--$10,000/three years 20/ [21 U.S.C. §1041(a)] |
| 2. | Use of false or misleading labeling, including deceptive or unauthorized use of USDA stamps or labels. [21 U.S.C. §§1036, 1037(b),(d)] | Same as #1 |
| 3. | Engaging in deceptive practices concerning the filling of packages or use of misleading containers. [21 U.S.C. §§1036, 1037(b)] | Same as #1 |
| 4. | Failure to include prescribed information on labels. [21 U.S.C. §§1036, 1037(b)] | Same as #1 |

C. Fruits and Vegetables 21/

| | | |
|---|---|---|
| 1. | Engaging in unfair or deceptive acts and practices, or making false or misleading statements. [7 U.S.C. §499b(1),(4)] | Administrative: Suspension or revocation of license [7 U.S.C. §499h(a)]; Award of reparations to injured parties [7 U.S.C. §499g(a)]<br><br>Private: Individuals may sue to enforce administrative reparation orders entered in their favor [7 U.S.C. §499g(b)] |
| 2. | Misrepresentation, by label or otherwise, as to type, quality, quantity, size, weight, degree of maturity, condition, or place of origin. [7 U.S.C. §499b(5)] | Same as #1 |

| | | |
|---|---|---|
| 3. | Alteration of USDA official stamps or tags showing grade or quality. [7 U.S.C. §499b(6)] | Same as #1 |

D. Seeds 22/

| | | |
|---|---|---|
| 1. | Use of false labeling or advertising of agricultural or vegetable seeds. [7 U.S.C. §§1571(d), 1575] | Administrative: Cease and desist order [7 U.S.C. §1599]<br><br>Civil: Seizure and condemnation [7 U.S.C. §1595(a)]; Forfeiture of $25 to $500 per violation [7 U.S.C. §1596(b)]<br><br>Criminal: First offense--$1,000; Subsequent offenses--$2,000 23/ [7 U.S.C. §1596(a)] |
| 2. | Failure to include labels containing prescribed information. [7 U.S.C. §1571(a),(b),(i),(j)] | Same as #1 |
| 3. | Use of disclaimers, limited warranties, or nonwarranty clauses in advertisements. [7 U.S.C. §1574] | Administrative, Civil, Criminal: See #1<br><br>Other: Disclaimers may not be used defensively in any proceeding brought under these provisions [7 U.S.C. §1574] |
| 4. | Importation of adulterated or falsely labeled seeds. [7 U.S.C. §§1581, 1582] | Administrative: Denial of entry at customhouse [7 U.S.C. §1582(a)] |
| 5. | Selling, or offering to sell, imported seed which is adulterated or falsely labeled, or making false or misleading representations concerning such seed. [7 U.S.C. §1586(a),(c)] | Same as #1 |

## E. Other Prohibited Practices

| | |
|---|---|
| 1. Making any misrepresentation relating to a USDA grading service. [7 U.S.C. §1622(h)] | Criminal: $1,000/one year [7 U.S.C. §1622(h)] |
| 2. Manufacture, sale, or importation of worthless products intended for use in the treatment of domestic animals. [21 U.S.C. §151] | Administrative: If imported, denial of entry at customhouse [21 U.S.C. §153]; Suspension or revocation of license [21 U.S.C. §156]<br><br>Criminal: $1,000/one year [21 U.S.C. §158] |
| 3. Use of schemes by retail food sellers to prevent the use of food stamps at other stores. [7 C.F.R. §272.2(f)] | |

## Footnotes

1. See generally the Agricultural Marketing Act of 1946, 7 U.S.C. §1621 et seq.; USDA, Services Available Through the U.S. Department of Agriculture (1974).

2. 7 U.S.C. §1622(h). While USDA inspection of many agricultural products is mandatory, e.g., meat and poultry, grading services are voluntary and are purchased by those requesting them. Even where USDA grading is provided, the law does not require the use of labels. See generally USDA Home and Garden Bulletin No. 196, How to Use USDA Grades in Buying Foods (rev. 1977).

3. See also Farm Credit Administration.

4. False advertising of food is regulated by the Federal Trade Commission. 15 U.S.C. §52.

5. See generally USDA, The Food Stamp Program (rev. 1976).

6. See generally the Federal Meat Inspection Act, 21 U.S.C. §601 et seq.; 7 C.F.R. 53.

7. See generally the Poultry Products Inspection Act, 21 U.S.C. §451 et seq.; 7 C.F.R. 70.

8. "Adulterated" defined: 21 U.S.C. §§453(g), 601(m).

9. "Misbranded" defined: 21 U.S.C. §§453(h), 601(n).

10. Before criminal violations are reported to a U.S. Attorney, the prospective defendant is given notice and an opportunity to present an explanation. 21 U.S.C. §462.

11. See generally the Packers and Stockyards Act, 1921, 7 U.S.C. §181 et seq. "Packers" defined: 7 U.S.C. §191.

12. As regards the relationship of the Federal Trade Commission and USDA under this Act, see 7 U.S.C. §227.

13. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System.

14. The Fair Credit Reporting Act is discussed under Federal Reserve System.

15. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

16. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission.

17. See generally the Egg Products Inspection Act, 21 U.S.C. §1031 et seq.; 7 C.F.R. 55, 56.

18. "Adulterated" defined: 21 U.S.C. §1033(a).

19. "Misbranded" defined: 21 U.S.C. §1033(1).

20. See note 10 supra; 21 U.S.C. §1042.

21. Included are fresh and frozen fruits and vegetables. See generally the Perishable Agricultural Commodities Act, 7 U.S.C. §499a et seq., which principally concerns wholesale transactions. See also 7 C.F.R. 51.

22. See the Federal Seed Act, 7 U.S.C. §1551 et seq.

23. See note 10 supra; 7 U.S.C. §1598.

II. CIVIL AERONAUTICS BOARD (1938)

A. All Air Carriers..... 11

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C. Charter Flights..... 14

D. Ticket Agents..... 16

## II. CIVIL AERONAUTICS BOARD (1938)

The Civil Aeronautics Board (CAB) is an independent regulatory agency responsible for promoting and regulating the economic activities of all U.S. air carriers providing domestic and international service, and foreign air carriers, to the extent that they operate to or from the United States. 1/ Besides airlines, other air transportation entities, such as air freight forwarders, tour operators, and, to a limited extent, travel agents are regulated; intrastate carriers and air taxis are exempt from most CAB regulation.

The CAB licenses air carriers, approves all fares, 2/ and provides generally for competition among carriers. It also proscribes unfair or deceptive practices in the provision or sale of air transportation. 3/

| Prohibited Practices | Remedies |
|---|---|
| **A. All Air Carriers** | |
| 1. Engaging in air transportation without CAB authorization or charging rates which do not conform with those filed with the CAB. [49 U.S.C. §§1371(a), 1373(b)] | Administrative: Cease and desist order [49 U.S.C. §1324(a)]; Order compelling compliance [49 U.S.C. §1482]; Suspension or revocation of license [49 U.S.C. §1324(a)]<br><br>Civil: Enforcement or administrative orders [49 U.S.C. §1487(a)]; Enjoin violations [49 U.S.C. §1487(b)]; Civil penalty to $1,000 per violation [49 U.S.C. §1471(a)]<br><br>Private: For violations of 49 U.S.C. §1371(a), any party in interest may sue for injunctive relief [49 U.S.C. §1487] |
| 2. Engaging in unfair or deceptive practices in air transportation or the sale thereof. [49 U.S.C. §1381] | Administrative: Cease and desist order [49 U.S.C. §1324(a)] |
| 3. Use of deceptive advertisements concerning on-time performance claims. [14 C.F.R. §399.812 | Administrative, Civil: See #1 |

| | |
|---|---|
| 4. Use of any name other than that in which CAB authorization to operate was issued. [14 C.F.R. §215.2] | Same as #3 |
| 5. Making any misrepresentation concerning affiliation of air carriers with each other. [14 C.F.R. §399.82] | Same as #3 |
| 6. Disclaimer of liability for lost or damaged baggage or other property not carried in the aircraft cabin. 4/ [49 U.S.C. §1516] | |
| 7. Violation of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts. 5/ [15 U.S.C. §1607(a)(4)] | Administrative: All powers usually exercised by the CAB [15 U.S.C. §1607(b)]<br><br>Criminal, Private: See Federal Reserve System |
| 8. Violation of the Fair Credit Reporting Act. 6/ [15 U.S.C. §1681s(b)(5)] | Administrative: All powers usually exercised by the CAB [15 U.S.C. §1681s(c)]<br><br>Criminal, Private: See Federal Reserve System |
| 9. Violation of the Equal Credit Opportunity Act. 7/ [15 U.S.C. §1691c(a)(5)] | Administrative: All powers usually exercised by the CAB [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System |
| 10. Violation of the Fair Debt Collection Practices Act. 8/ [15 U.S.C. §1692 l(b)(5)] | Administrative, Civil, Criminal: All authority conferred on the CAB by any law, except the promulgation of regulations [15 U.S.C. §1692 l(c)]<br><br>Private: See Federal Trade Commission, #I1 |

## B. Scheduled Flights

| | |
|---|---|
| 1. Oral confirmation of space, unless specifically permitted. [14 C.F.R. §399.83] | Administrative: See #A1<br><br>Civil: Enforcement of Administrative orders [49 U.S.C. §1487]; Civil penalty to $1,000 per violation [49 U.S.C. §1471(a)] |
| 2. Advertisement of "group inclusive tours," 9/ unless the total tour price is disclosed. [14 C.F.R. §399.84] | Same as #1 |
| 3. Failure to conspicuously display notices disclosing the possibility of deliberate overbooking, boarding procedures in the event of oversales, and the possibility of compensation at all ticket selling locations, or to include the notice with each ticket sold. 10/ [14 C.F.R. §250.11] | Same as #1 |
| 4. Denial of boarding to passengers against their will on oversold flights, unless volunteers are first sought to give up their reservations in exchange for compensatory payments. [14 C.F.R. §250.2b] | Same as #1 |
| 5. Failure to pay compensation in prescribed amounts to passengers involuntarily denied boarding on oversold flights. 11/ [14 C.F.R. §250.4] | Same as #1 |
| 6. Failure to furnish a written explanation of the terms, conditions, and limitations of denied boarding compensation, as well as the carrier's boarding priority rules and criteria, immediately to passengers involuntarily denied boarding, or to any person upon request at any ticket selling or boarding location. [14 C.F.R. §205.9] | Same as #1 |

| | |
|---|---|
| 7. Failure to make simplified summaries of the various fares available to the public at all ticket selling locations. [14 C.F.R. 221a] | Same as #1 |

C. Charter Flights 12/

| | |
|---|---|
| 1. Solicitation, by carriers, of passengers for charter flights, unless a contract with a sponsoring organization has been signed. [14 C.F.R. §§207.21(a), 208.210] 13/ | Administrative: Cease and desist order [49 U.S.C. §1324(a)]; Order compelling compliance [49 U.S.C. §1482]; Suspension or revocation of license [49 U.S.C. §§1324(a), 1371(n)]<br><br>Civil: See #B1 |
| 2. Failure, by carriers, to insure or otherwise safeguard passengers against injury, death, or loss of property caused by carrier negligence. [49 U.S.C. §1371(n)(1),(2)] 14/ | Same as #1 |
| 3. Overcharging passengers, or including charges for purported charitable donations. [14 C.F.R. §207.43] 15/ | Same as #1 |
| 4. Failure, by charterers, to equally prorate charter costs among all passengers. 16/ [14 C.F.R. §207.43] | Administrative: Cease and desist order [49 U.S.C. §1424(a)]; Order compelling compliance [49 U.S.C. §1482]<br><br>Civil: See #B2 |
| 5. Failure, by charterers, to disclose that seat price is a pro rata share of total charter cost and is subject to change depending on the number of participants. [14 C.F.R. §207.44] 17/ | Same as #4 |

| | |
|---|---|
| 6. Failure, by charterers, to separately disclose each component of the total cost, plus other prescribed information. 18/ [14 C.F.R. §207.44] | Same as #4 |
| 7. Failure, by carriers, to deposit advance payments on charter flights into escrow accounts. [14 C.F.R. §208.40] 19/ | Same as #4 |
| 8. Failure, by tour operators, to include required provisions in contracts with charter participants. [14 C.F.R. §§378.17, 378a.30] | Same as #4 |
| 9. Payment, by carriers, of commissions to agents in excess of 5% of the total charter price, or of any commission if the agent is paid by a charterer for providing the same service. [14 C.F.R. §207.23] 20/ | Same as #1 |
| 10. Making of any misrepresentation, by a supplemental carrier, which suggests its services are those of a regular carrier. [14 C.F.R. §208.30] | Same as #1 |
| 11. Refusal to provide alternate transportation or prompt refunds if flights are unduly delayed for reasons other than weather. 21/ [14 C.F.R. §208.33] | Same as #1 |
| 12. Refusal to provide incidental expenses, or meals and lodging, if return flights are unduly delayed outside the United States. 22/ [14 C.F.R. §208.32a] | Same as #1 |

13. Proposed:
Failure to pay compensation to passengers denied boarding on oversold charter flights, 23/ or to provide a written explanation of passenger rights at the time boarding is denied.
[41 Fed. Reg. 47,494(1976)]

## D. Ticket Agents

1. Charging rates which do not conform with those filed with the CAB.
[49 U.S.C. §1373(b)]

Administrative: See #C4

Civil: See #B1

2. Advertisement of offer of air transportation or services at rates which differ from those filed, or offer of rebates.
[14 C.F.R. §399.80]

Administrative, Civil: See #1

Criminal: $100 per offense, to $5,000 for any series of related offenses
[49 U.S.C. §1472(d)]

3. Advertisement of "group inclusive tours," unless the total price is disclosed. 24/
[14 C.F.R. §399.84]

Same as #1

4. Making any misrepresentation concerning:

Same as #1

a. Status of ticket agents as carriers;

b. Fares or charges, or the availability of special discounts, reductions, or special priorities;

c. Requirements for charter or group fare flights;

d. Direct insurance of passengers;

e. Service, times of departure or arrival, routes, stops, or trip times;

f. Pilot or carrier safety records or

| | |
|---|---|
| g. Handling, forwarding, routing, or loss of baggage, or failure to honor claims for loss or damage. [14 C.F.R. §399.80] | |
| 5. Verbal confirmation of space on scheduled flights, unless specifically permitted. [14 C.F.R. §399.83] | Same as #1 |
| 6. Sale of space in the absence of a binding commitment from an air carrier or with knowledge that a ticket will not be honored. [14 C.F.R. §399.80] | Same as #1 |
| 7. Acceptance of commissions from air carriers and charterers for providing the same service. [14 C.F.R. §§207.30, 208.203, 212.52, 214.20] 25/ | Same as #1 |
| 8. Failure to provide prompt refunds if service cannot be provided, or forcing sale of more expensive transportation. [14 C.F.R. §399.80] | Same as #1 |

## Footnotes

1. Safety and operational aspects of air transportation services are the responsibility of the Federal Aviation Administration, a subdivision of the Department of Transportation.

2. See generally CAB, Consumer Facts on Air Fares (1976). Although fare setting is the exclusive province of the CAB, the Department of Transportation may also study such fares, e.g., to compare regulated fares with those resulting in competitive markets.

3. For a discussion of CAB jurisdiction and enforcement, see B. Diederich, Protection of Consumer Interests Under the Federal Aviation Act, 40 J. Air L. 1 (1974). See also CAB, Air Travelers' Fly-Rights (rev. 1976); CAB, Consumer Guide to International Air Travel (1976).

4. By virtue of rulemaking proceedings completed during 1977, air carriers are responsible for all direct and consequential expenses resulting from the loss of, damage to, or delay in the delivery of personal property transported, including baggage, up to a limit of $750 per passenger for undeclared property or the declared value, whichever is higher (Order 77-2-9). Absent a showing of good cause why a claim is not brought within the specified limit, carriers may limit liability claims to those filed within not less than 45 days from the occurrence giving rise to the claim. Any written notification received by the carrier within the period provided is sufficient to meet the requirements for timely notice (Order 77-9-80). Carriers may disclaim liability for classes of items described in their tariffs as fragile, perishable, or otherwise unsuitable for air transportation, except that they may not disclaim liability for damage to eyeglasses and contact lenses contained in cases, cameras (one per passenger), and reasonable quantities of toiletries. Notwithstanding the foregoing, carriers must now accept liability for any time which is not contained in a suitcase or other container customarily intended for use in the personal transportation of clothing, unless a passenger signs a document releasing the carrier from liability for damage resulting solely from the fragile or perishable nature of a particular item.

5. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System.

6. The Fair Credit Reporting Act is discussed under Federal Reserve System.

7. The Equal Credit Opportunity Act is discussed under Federal Reserve System. In November 1977, the CAB announced it was conducting a non-public investigation to determine whether air carriers are complying with the Act. Washington Star, Nov. 9, 1977, at E9, col. 3.

8. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission.

9. Group discount fares may require the prepurchase of certain ground accomodations and involve such other requirements as a minimum stay.

10. See generally the supplementary information accompanying a comprehensive amendment to CAB regulations governing oversales, which is found in 43 Fed. Reg. 24,277 (June 5, 1978).

11. Compensation for a passenger with confirmed reservations who is denied boarding involuntarily because a flight has been oversold is equal to 200% of the sum of the values of the passenger's remaining flight coupons up to the next stopover or, if none, to his or her destination, with a $50 minimum and a $400 maximum. 14 C.F.R. §250.5 The original ticket may still be used or submitted for a refund. If the carrier arranges alternate transportation which gets the passenger to his or her destination within two hours (four hours in the case of international travel) of the original arrival time, and the passenger accepts such alternate transportation, he or she is still entitled to one-half the denied boarding compensation otherwise payable, with a $25 minimum and a $200 maximum. Id. In all cases, the passenger may reject the offer of compensation and pursue the matter in the courts, on a contractual or tortious basis. Exceptions to eligibility for denied boarding compensation are set forth in 14 C.F.R. §250.6.

12. By regulation, the CAB has established various forms of charter flights, known as "Special Regulations Charters." See 14 C.F.R. 371, Advance Booking Charters (ABC); 14 C.F.R. 372, Overseas Military Personnel Charters (OMPC); 14 C.F.R. 372a, Travel Group Charters (TGC); 14 C.F.R. 373, Study Group Charters (SGC); 14 C.F.R. 378; Inclusive Tour Charters (ITC); and 14 C.F.R. 378a, One-Stop-Inclusive Tour Charters (OTC). Tour operators acting as indirect air carriers under these regulations sell these charter flights to the public both directly and through retail travel agents. (An indirect air carrier generally purchases the capacity of an aircraft for a particular flight or series of flights and resells this space to the public.) Although tour operators are not licensed, the CAB controls the conditions under which tours may be sold and operated, and exempts the operators from the requirements of the Federal Aviation Act to the extent necessary to permit them to operate such tours. Exemptions are conditioned upon compliance by the operator with the terms of the regulations. In order to obtain such an exemption, a tour operator must file with the CAB a tour prospectus containing the charter contract with the direct air carrier, a surety bond, a depository agreement with a bank, and a description of the tour and its price per passenger. 14 C.F.R. §371.28 In addition, the regulations require that the payments of tour participants be placed in escrow accounts by tour operators and specify the manner in which funds are to be handled and disbursed. See 14 C.F.R. §371.31(b)(2).

13. See also 14 C.F.R. §§207.40, 208.200a, 212.21, 214.11, 214.30.

14. See also 14 C.F.R. §§208.10-.15.

15. See also 14 C.F.R. §§208.213, 212.43.

16. An exception is made as to children under 12 years of age. 14 C.F.R. §207.43. See also 14 C.F.R. §§208.213, 212.43.

17. See also 14 C.F.R. §§208.214, 212.44, 214.34.

18. In all announcements, the chartering organization must separately disclose the cost of ground arrangements, air transportation, administrative expenses, the total cost, the identity of the carrier, the number of seats available, and the type of aircraft to be used. 14 C.F.R. §207.44. See also 14 C.F.R. §§208.214, 212.44, 214.34.

19. See also 14 C.F.R. §§212.15, 214.9c.

20. See also 14 C.F.R. §§212.23, 214.15.

21. In the case of interstate and overseas flights delayed more than six hours beyond the charter contract departure time, or four hours beyond the time stated on the ticket, the carrier must upon request provide alternate transportation at no additional cost or an immediate refund of the full value of the unused ticket or unfulfilled charter contract. Delays en route of more than six hours for charters, or more than two hours for individually ticketed flights, also require substitute transportation. No refund or alternate arrangements are required if weather is the sole cause of the cancellation or delay.

22. If foreign charter flight does not commence take-off procedures before the 48th hour following the scheduled departure time, substitute transportation is required. On the return portion of a charter flight outside the country in which the flight originated and is to terminate, unless take-off procedures commence within six hours of the schedule departure time, the carrier must pay "incidental expenses," which consist of prescribed cash amounts based upon the duration of the delay, or the carrier may elect to provide free meals and lodging.

23. See also note 11 supra.

24. See note 9 supra.

25. See also 14 C.F.R. §§212.23, 214.15.

III. CIVIL SERVICE COMMISSION (1883)

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## III. CIVIL SERVICE COMMISSION (1883)

The Civil Service Commission (CSC), as the "central personnel agency" of the Executive Branch of the U.S. Government, is involved with the recruitment, examination, training, appointment, and promotion of individuals to government positions. The CSC also manages employee benefits which affect millions of federal workers.

| Prohibited Practices | Remedies |
|---|---|
| **A. Health Insurance -- Federal Employees 1/** | |
| 1. Illegally engaging in the health insurance business. [5 C.F.R. §890.202(a)] | Administrative: Withdrawal of CSC approval of the plan [5 U.S.C. §8902(e); 5 C.F.R. §890.205] |
| 2. Charging initiation, service, enrollment, or other improper fees. [5 C.F.R. §890.201(b)(4)] | Same as #1 |
| 3. Imposition of waiting periods. [5 C.F.R. §890.201(b)] | Same as #1 |
| 4. Denial of payment for covered benefits because of pre-existing physical or mental conditions. [5 C.F.R. §890.201(b)] | Administrative: See #1; CSC may require payment for, or provision of, health services or supplies [5 U.S.C. §8902(j)] |
| 5. Making a false response to any question in an application to participate in the program. | Administrative: Denial of application<br>Criminal: $10,000/five years [18 U.S.C. §1001] |
| **B. "Civil Service" Correspondence Schools 2/** | |
| 1. Misrepresentation as to prospects for success in examinations, employment, or affiliation with the U.S. Government. 3/ | |

## Footnotes

1. See generally 5 U.S.C. §8901 et seq.

2. "Civil service" correspondence schools are those which offer courses purporting to prepare buyers to pass civil service examinations.

3. Although the CSC solicits complaints of this nature, it lacks legal authority to impose any sanctions for deceptive acts. Such matters must be referred to other agencies such as the Federal Trade Commission or state attorneys general or consumer protection agencies. Home study schools are also the subject of a pending trade regulation rule before the Federal Trade Commission as well as guidelines issued by the FTC (16 C.F.R. §254). See also Veterans Administration, particularly #A1, 6,7.

IV. DEPARTMENT OF COMMERCE (1913)

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## IV. DEPARTMENT OF COMMERCE (1913)

The Department of Commerce (DOC) is a cabinet level department that fosters, promotes, and develops the domestic and foreign commerce of the United States, 1/ as well as the nation's general economic development and technological advancement. These functions involve the DOC in a number of consumer-related activities, including the promulgation of standards and performance information labeling specifications for consumer products, promulgation of criteria for accrediting testing laboratories, inspection and grading of products, and the monitoring of certain commercial practices. It also performs various consumer-related activities in support of other federal agencies. 2/

The National Bureau of Standards (NBS) 3/ cooperates with the states in securing uniformity in weights and measures laws and methods of inspection. The development of voluntary product standards, including performance criteria and requirements for consumer products, is another function of the NBS. The NBS also performs many of the DOC's packaging and labeling functions, 4/ thus assisting consumers in making meaningful value comparisons between products.

The Patent and Trademark Office (PTO) administers federal trademark 5/ and patent requirements, which protect consumers from confusion and deception in brand identification.

The National Marine Fisheries Service (NMFS), which is part of the National Oceanic and Atmospheric Administration, administers voluntary programs for seafood inspection and standardization as to quality, condition, quantity, and grade, and packaging of fish products. 6/

A relatively new addition to the DOC, the National Fire Prevention and Control Administration (NFPCA) 7/ administers programs aimed at fire prevention, including the development of purchase specifications and standards for such consumer products as fire detection and extinguishing devices. 8/ The NFPCA is primarily involved in research and educational programs; particular emphasis to date has been placed on delivery of smoke detector information to consumers through the fire services.

Finally, the DOC assisted in the creation of the National Business Council for Consumer Affairs (NBCCA), 9/ which has identified and analyzed eight particular areas of consumer dissatisfaction with business, and promulgated voluntary remedial guidelines. 10/

| Prohibited Practices | Remedies |
|---|---|
| **A. Consumer Products -- Packaging and Labeling** | |
| 1. Failure, by manufacturers, packers, or distributors, to participate in the development of voluntary packaging and labeling standards if requested to do so, or to comply with such voluntary standards if enacted. 11/ [15 U.S.C. §1454(d),(e); 15 C.F.R. 12] | Administrative: After one year, Congress may be requested to enact legislation providing regulatory authority [15 U.S.C. §1454(e); 15 C.F.R. §12.4] |
| 2. Failure, by manufacturers, assemblers, or private brand labelers participating in the Voluntary Consumer Product Information Labeling Program, to comply with the conditions set out in the procedures for the program or in a performance information labeling specification issued thereunder. 12/ [15 U.S.C. §272; 15 C.F.R. §16.7] | Administrative: Termination of continued participation in the program [15 C.F.R. §16.8]; Desist use of DOC label and mark if participation in the program is terminated [15 C.F.R. §16.7(a)(4)] |
| **B. Fruits and Vegetables** | |
| 1. Packaging or selling apples in barrels of less than a specified size. 13/ [15 U.S.C. §233] | Civil: $1.00 for each such barrel sold or offered for sale [15 U.S.C. §233] |
| 2. Packing or selling other fruits, vegetables, or dry commodities in barrels of less than a specified size. 14/ [15 U.S.C. §235] | Criminal: $500/six months [15 U.S.C. §235] |

## C. Trademarks and Patents

| | |
|---|---|
| 1. Unauthorized use of registered trademarks. [15 U.S.C. §1114] | Private: Registrants may sue for injunctive relief and for recovery of profits, damages, and costs [15 U.S.C. §§1116, 1117] |
| 2. Fraudulent procurement of trademark registrations. [15 U.S.C. §1064] | Administrative: Revocation of registration, on petition of the Federal Trade Commission or any person who believes he is or will be damaged by the registration [15 U.S.C. §1064]<br><br>Private: Any injured person may file a civil lawsuit seeking consequential damages [15 U.S.C. §1120] |
| 3. Use of marks by registrants to misrepresent the source of goods or services. [15 U.S.C. §1064] | Administrative: See #2<br><br>Private: In any civil action involving a registered mark, the court may order the cancellation of the registration [15 U.S.C. §1119] |
| 4. False description or representation of goods in commerce. [15 U.S.C. §1125(a)] | Private: Any person believing he is or will be damaged by the use of false description or representation may file a civil lawsuit [15 U.S.C. §1125(a)] |
| 5. Importation of goods bearing infringing marks or names or misleading indications of country or locality of origin. 15/ [15 U.S.C. §1124] | Administrative: Denial of entry at customhouse [15 U.S.C. §1124] |

| | | |
|---|---|---|
| 6. | Use of marking or advertisements suggesting an item is made or sold under the patent of another. [35 U.S.C. §292(a)] | Civil: Civil penalty of $500 per violation [35 U.S.C. §292(a)]<br><br>Private: Any person may file a civil lawsuit seeking the above civil penalty. If successful, the plaintiff may retain one-half the amount awarded; the remainder goes to the United States 16/ [35 U.S.C. §292(b)] |
| 7. | Use of false representations, in marking, advertisements, or otherwise, suggesting an item is patented or that a patent application is pending. [35 U.S.C. §292(a)] | Same as #6 |
| 8. | Falsely holding oneself out as qualified to prepare or prosecute patent applications. [35 U.S.C. §33] | Criminal: $1,000 [35 U.S.C. §33] 17/ |

D. Testing Laboratories

| | | |
|---|---|---|
| 1. | Failure, by testing laboratories accredited under the National Voluntary Laboratory Accreditation Program, to avoid reference by itself, or to forbid others utilizing its services from making reference, to its accredited status in consumer media, advertisements, or on product labels, containers, and packaging (or the contents therein) except as specifically authorized. 18/ [15 U.S.C. §272; 15 C.F.R. §7.7(c)(3)] | Administrative: Revocation of accreditation [15 C.F.R. §7.13] |

## E. Other Prohibited Practices

| | |
|---|---|
| 1. Packing or selling lime in barrels of less than a specified size. 19/ [15 U.S.C. §238] | Criminal: $100 [15 U.S.C. §241] |

## Footnotes

1. See generally 15 U.S.C. §1501 et seq.

2. For example, such support is provided to the Consumer Product Safety Commission, Food and Drug Administration, and Department of Housing and Urban Development.

3. See 15 U.S.C. §§271, 1511.

4. Some of these arise under the Fair Packaging and Labeling Act, 15 U.S.C. §1454(d). See also Department of Agriculture; Federal Trade Commission; Food and Drug Administration.

5. A trademark is any distinctive word, name, symbol, or device used by a manufacturer, merchant, or businessman to identify goods or services and distinguish them from those manufactured or sold by others. General Services Administration, United States Government Manual 148 (1976/77 ed.).

6. The voluntary seafood inspection program is in lieu of mandatory inspection such as that required by the Department of Agriculture in regard to certain food products. Those electing to use the DOC seafood inspection service must pay for it. 41 Fed. Reg. 42, 847 (1976).

7. See 15 U.S.C. §2204(a).

8. 15 U.S.C. §2207(a)(5),(6),(8).

9. The NBCCA, established in August 1971 by Executive Order of the President, originally consisted of 115 officers of prominent U.S. corporations appointed by the Secretary of Commerce.

10. These include such matters as advertising, packaging and labeling, product warranties, and product safety.

11. Under the Fair Packaging and Labeling Act, 15 U.S.C. §1451 et seq., the DOC lacks authority to issue binding regulations governing packaging and labeling. (Such authority is vested in the Federal Trade Commission and Food and Drug Administration, which should also be reviewed.) The DOC does have the power to determine whether a consumer's ability to make value comparisons is impaired by the undue proliferation of weights, measures, or the quantities in which commodities are sold. In such cases, the development of voluntary product standards may be sought. It should also be noted that the NBCCA released its own packaging and labeling quidelines in June 1972, apparently as an alternative to the procedure provided for in the Fair Packaging and Labeling Act. See DOC, Consumer Affairs Bulletin 6 (1976).

12. 15 C.F.R. 16 provides for a voluntary consumer product information labeling program whereby information on the performance characteristics of consumer products in an understandable and useful form is made available to consumers at the point of sale. Violations meriting termination under the program would include deceptive trade practices by manufacturers in connection with labeling activities.

13. Standards for apple barrels are codified in 15 U.S.C. §§231, 232.

14. Standards for these products are codified in 15 U.S.C. §234. See also 15 C.F.R. 241. These requirements and penalties do not apply where such products are sold by weight or numerical count. 15 U.S.C. §236.

15. Manufacturers or traders may apply to the Department of the Treasury for recordation of commercial names or registered trademarks. 15 U.S.C. §1124.

16. A patentee may file a civil lawsuit for infringement of his patent, and seek damages or injunctive relief, or both. See 35 U.S.C. §§281, 283-285.

17. See also 5 U.S.C. §500(e).

18. A national voluntary system examines the professional and technical competence of testing laboratories that serve regulatory and nonregulatory product evaluation and certification needs and accredits those that meet the qualifications established pursuant to the procedures under which the program operates. 15 C.F.R. 7 Failure to observe and comply with federal, state, and local laws and regulations applicable to the operation of such laboratories may lead to revocation of accreditation.

19. Standards for lime barrels are codified in 15 U.S.C. §§237,239. See also 15 C.F.R. 240.

V. COMMODITY FUTURES TRADING COMMISSION (1975)

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## V. COMMODITY FUTURES TRADING COMMISSION (1975)

The Commodity Futures Trading Commission (CFTC) is a recently created independent regulatory agency. 1/ The authority of the CFTC over commodity futures 2/ markets is analogous to that possessed by the Securities and Exchange Commission regarding other securities. 3/

The CFTC protects commodity market users from fraud and abusive practices, including misappropriation of funds, price manipulation, and the dissemination of false or misleading information affecting commodity prices. The CFTC safeguards investors by registering exchanges, brokers, and agents and requiring lengthy disclosures prior to all commodity transactions.

| Prohibited Practices | Remedies |
|---|---|
| **Commodity Future Transactions** | |
| 1. Cheating, deceiving, or defrauding, or attempting to cheat, deceive or defraud, in connection with sales or commodities in interstate commerce. [7 U.S.C. §6b; 17 C.F.R. §§30.02] | Administrative: Refuse to register or suspend or revoke the registration of future commission merchants, commodity trading advisors, commodity pool operators and floor brokers [7 U.S.C. §12a]; Suspension, expulsion, or otherwise disciplining exchange members, or denying access to the exchange [7 U.S.C. §12c]; Entry of cease and desist order and imposition of a civil penalty of not more than $100,000 per violation [7 U.S.C. §§13a, 13b]; Award of reparations to customers of exchanges, brokers, or agents [7 U.S.C. §18(e)] 4/<br><br>Civil: Enjoin violations [7 U.S.C. §13a-1]; For failure to pay administratively imposed fines, the Attorney General may sue to recover same [7 U.S.C. §§13a, 13b]<br><br>Criminal: $100,000 and/or one year plus costs of prosecution [7 U.S.C. §13]; For failure to obey administrative cease and desist orders: $100,000/six months to one year [7 U.S.C. §§13a, 13b]<br><br>Private: Individuals may sue to enforce administrative reparation orders entered in their favor [7 U.S.C. §18(f)] |

| | |
|---|---|
| 2. Offering or selling commodity options to the general public. [43 Fed. Reg. 16153 (1978)] | Same as #1 |
| 3. Future commission merchant embezzling, stealing, or criminally converting a customer's property [7 U.S.C. §13] | Criminal: $100,000 and/or five years, plus costs of prosecution [7 U.S.C. §13] |
| 4. Unregistered commodity trading advisor's use of the mails or instrumentalities of interstate commerce in conduct of the business of commodity trading advising. [7 U.S.C. 6m] | Same as #1 |
| 5. Commodity trading advisor's fraud or deceit upon a client or prospective client, or representation that advisor has been approved by the United States. [7 U.S.C. 6o] | Same as #1 |
| 6. Delivery into the mails or interstate commerce of any offer, confirmation, execution, quotation, or price report relating to a commodity sale for future delivery, unless made by or through a member of a CFTC-designated contract market. [7 U.S.C. §6] | Same as #1 |
| 7. Failure by futures commission merchants or brokers soliciting or accepting orders for commodity futures or floor brokers executing orders to first register with the CFTC, or engaging in such business after a registration expires or is suspended or revoked. 5/ [7 U.S.C. §6d, 6e] | Same as #1 |
| 8. Failure to execute a written contract, including the date, parties, addresses of the parties, property covered, price, and terms of delivery, in commodity sales. [7 U.S.C. §6] | Same as #1 |
| 9. Failure to segregate and separately account for customers' money, securities, or property. [7 U.S.C. §6d; 17 C.F.R. §§1.20, 32.6(a)] | Same as #1 |

| | |
|---|---|
| 10. Improper use, investment or theft of customers' money, securities, or property. [7 U.S.C. §13(a); 17 C.F.R. §§1.22, 1.25] | Same as #1 |
| 11. Manipulation or attempted manipulation of the price of any commodity in interstate commerce or the dissemination of false or misleading reports concerning crop or market information or conditions that might affect the price of commodities. [7 U.S.C. §13(b)] | Same as #3 |

## Footnotes

1. The CFTC was established by the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. §4a, and commenced operations April 21, 1975.

2. Commodity futures traders speculate concerning future prices of such commodities as sugar, coffee, soybeans, and gold. The investor purchases a contract for delivery at some future date of a specified quantity of a particular commodity. If the market price for that commodity on that later date sufficiently exceeds the contract price, the investor will realize a profit.

3. Surprisingly, perhaps, the dollar value of trade in commodity futures exchanges far exceeds that in the nation's stock exchanges. As regards securities transactions, see Securities and Exchange Commission.

4. Failure to pay such reparation orders may result in a bar on trading privileges and a suspention of registration. 7 U.S.C. §18(h).

5. As regards registration of merchants and brokers, reference should be made to 7 U.S.C. §6f; 17 C.F.R. §§1.7-1.18.

VI. COMPTROLLER OF THE CURRENCY (1863)

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## VI. COMPTROLLER OF THE CURRENCY (1863)

The Office of the Comptroller of the Currency (OCC), a bureau of the Department of the Treasury, 1/ has the responsibility of regulating and supervising more than 4,700 national banks. 2/ Most importantly, it has the duty of supervising the banks' financial soundness, and to ensure that their policies comply with applicable federal and state laws. In this capacity, the OCC enforces, among other things, compliance with consumer protection laws through special consumer examinations and resolution of complaints from the public. 3/

| Prohibited Practices | Remedies |
|---|---|
| **A. National Banks** | |
| 1. Engaging in unfair or deceptive acts or practices affecting consumers. [15 U.S.C. §57a(f)(2)(A)] | Administrative: Formal and informal agreements enjoining cease and desist orders [12 U.S.C. §1818(b)(1)]; Termination of FDIC-insured status [15 U.S.C. §57a(f)(2)]; All other powers usually exercised by the OCC [15 U.S.C. §57a(f)(3)]; Restitution 4/ |
| 2. Use of deceptive or misleading advertisements concerning interest paid on deposits, or failure to clearly and conspicuously disclose all required information in such advertisements. [12 C.F.R. §217.6] | Same as #1 |
| 3. Failure to disclose any penalty to be imposed in the event of early withdrawal. [12 C.F.R. §217.6(e)] | Same as #1 |

| | | |
|---|---|---|
| 4. | Charging interest in excess of that permitted by state law where the bank is located, or as otherwise permitted. 5/<br>[12 U.S.C. §§85, 86; 12 C.F.R. §7.7310] | Administrative: Formal and informal agreements enjoining violations; Cease and desist order<br>[12 U.S.C. §1818(b)(1); 12 C.F.R. 19]<br><br>Civil: Forfeiture of franchise; Personal liability of directors for consequential damages<br>[12 U.S.C. §93]<br><br>Private: Individuals may sue for twice the amount of interest paid<br>[12 U.S.C. §86]<br><br>Other: All interest is deemed forfeited<br>[12 U.S.C. §86] |
| 5. | Diversion of income from the sale of credit life or accident and health insurance to individual officers, directors, or others, rather than crediting it to the bank's income accounts. 6/<br>[12 C.F.R. 2] | Administrative: See #2, except that 12 C.F.R. 19 does not apply |
| 6. | Extension of credit, lease or sale of property, or furnishing of a service subject to a requirement that the customer obtain any additional credit, property, or service from the bank or a related entity.<br>[12 U.S.C. §1972(1),(2)] | Administrative: See #5<br><br>Civil: Enjoin violations<br>[12 U.S.C. §1973]<br><br>Private: Individuals may file civil damages sustained, plus costs and attorney's fees, or for injunctions against threatened loss or damage<br>[12 U.S.C. §§1975, 1976] |
| 7. | Requiring a customer to provide any additional credit, property, or service other than those related to and usually provided in connection with the loan or service provided.<br>[12 U.S.C. §1972(3),(4)] | Same as #6 |

| | | |
|---|---|---|
| 8. | Requiring that a customer not obtain some other credit, property, or service from a competitor. [12 U.S.C. §1972(5)] | Same as #6 |
| 9. | Certification of checks when the amount deposited is inadequate to cover payment. [12 U.S.C. §501] | Administrative: See #4<br><br>Civil: Forfeiture of franchise; Personal liability of directors for consequential damages [12 U.S.C. §501a]<br><br>Other: Such checks are valid obligations against banks certifying them [12 U.S.C. §501] |
| 10. | Advertisement, sale, or other involvement with lottery tickets. [12 U.S.C. §25a] | Administrative, Civil: See #4 |
| 11. | Extension of credit secured by real estate or a mobile home located in a designated flood hazard area, unless a written notice of such hazard is provided at least ten days before consummation. [12 C.F.R. §22.6] | Same as #10 |
| 12. | Violation of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts. 7/ [15 U.S.C. §1607(a)(1)(A)] | Administrative: All powers usually exercised by the OCC 8/ [15 U.S.C. §1607(b)]<br><br>Criminal, Private: See Federal Reserve System, #A1<br><br>Other: See Federal Reserve System, #A10, D2, F4,5 |

| | | |
|---|---|---|
| 13. | Violation of the Fair Credit Reporting Act. 9/ [15 U.S.C. §1681s(b)(1)(A)] | Administrative: All powers usually exercised by the OCC [15 U.S.C. §1681s(c)]<br><br>Criminal, Private: See Federal Reserve System, #B1 |
| 14. | Violation of the Equal Credit Opportunity Act. 10/ [15 U.S.C. §1691c(a)(1)(A)] | Administrative: All powers usually exercised by the OCC [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |
| 15. | Violation of the Real Estate Settlement Procedures Act. 11/ [12 U.S.C. §2601 et seq.; 24 C.F.R. 3500] | |
| 16. | Violation of the Fair Debt Collection Practices Act. 12/ [15 U.S.C. §1692 l(b)(1)(A)] | Administrative, Civil, Criminal: All authority conferred on the OCC by any law, except the promulgation of regulations [15 U.S.C. §1692 l(c)]<br><br>Private: See Federal Trade Commission, #I1 |

B. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Fraudulent use of the word "national" as part of the name of a bank. [18 U.S.C. §709] | Civil: Any U.S. Attorney may sue to enjoin violations [18 U.S.C. §709]<br><br>Criminal: Business entity--$1,000; Individual--$1,000/ one year [18 U.S.C. §709] |

## Footnotes

1. Other offices are described under Department of the Treasury.

2. Commercial banks in the District of Columbia are also regulated by the OCC.

3. Consumers are assisted in filing complaints concerning national banks through the availability of an OCC form entitled "Do You Have a Complaint Against a National Bank?"

4. As a matter of agency policy, the OCC also obtains restitution for injured parties in certain cases.

5. Alternatively, banks are allowed to charge a rate of 1% in excess of the 90-day commercial paper discount rate in effect in their Federal Reserve district. In the event there is no state usury law, national banks may choose between the latter method of computing maximum interest rates or charging a 7% interest rate.

6. This regulation was promulgated in September 1977, and took effect January 1, 1978. Neither the Federal Reserve System nor the Federal Deposit Insurance Corporation, the other two federal bank regulators, prohibit this practice. Other credit insurance problems are not addressed by this rule, e.g., excessive rates. The regulation does not cover credit property insurance. The Independent Bankers Association filed a lawsuit seeking to have the regulation declared invalid. Washington Post, December 24, 1977, at D6, col. 2.

7. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System.

8. In order to bring about uniformity in the administrative actions taken when violations of the Truth in Lending Act are found, the OCC, together with other enforcing agencies, has published a proposal of interagency enforcement guidelines. 42 Fed. Reg. 55,786 (1977) The guidelines are intended to provide for improved and uniform enforcement of the Act through corrective action, including reimbursement. The guidelines do not, however, substitute for any other administrative authority that the agencies have to enforce the Act.

9. The Fair Credit Reporting Act is discussed under Federal Reserve System.

10. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

11. The Real Estate Settlement Procedures Act is discussed under Department of Housing and Urban Development, B.

12. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission. See also Federal Reserve System, n. 35.

VII. CONSUMER PRODUCT SAFETY COMMISSION (1973)

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## VII. CONSUMER PRODUCT SAFETY COMMISSION (1973)

The Consumer Product Safety Commission (CPSC) is an independent regulatory agency charged with substantially reducing injuries associated with consumer products. 1/ Congress has directed the CPSC to:

- Protect the public from unreasonable risks of injury associated with consumer products;
- Assist consumers in evaluating products' comparative safety;
- Develop uniform safety standards and minimize conflicting state and local regulations; and
- Promote relevant research and investigation into causes and prevention of product-related deaths, illnesses, and injuries.

The CPSC carries out its mandate by issuing and enforcing safety standards, rules, and regulations which govern the production, importation, and marketing of consumer products that present risks of injury. Safety rules may include requirements for packaging and labeling. The CPSC may also ban hazardous products from the marketplace.

In all, the CPSC regulates more than 10,000 consumer products. 2/ The regulatory activities of the CPSC derive from five separate acts: the Consumer Product Safety Act of 1972 3/ and four older statutes previously administered by other agencies, the Flammable Fabrics Act, 4/ Poison Prevention Packaging Act of 1970, 5/ Federal Hazardous Substances Act, 6/ and Refrigerator Safety Act. 7/ Under the Consumer Product Safety Act, the CPSC has no jurisdiction over foods, drugs, tobacco, and motor vehibles, which are regulated by other agencies. 8/ Unfortunately, not all products regulated by the CPSC are subject to the same procedural enforcement provisions, since risks of injury that could be eliminated or reduced to a sufficient extent under the transferred acts may be regulated under the Consumer Product Safety Act only if the CPSC, by rule, finds it is in the public interest to do so.

| Prohibited Practices | Remedies |
|---|---|
| **A. Consumer Products** | |
| 1. Manufacture, sale, or importation of banned consumer products or those not conforming with applicable safety standards. [15 U.S.C. §2068(a)(1),(2)] | Civil: Enjoin violations [15 U.S.C. §2071(a)]; 9/ Seizure and condemnation [15 U.S.C. §2071(b)] Civil penalty to $2,000 per violation, up to $500,000 for any series of related transactions [15 U.S.C. §2069(a)]<br><br>Criminal: $50,000/one year [15 U.S.C. §2070(a)] 10/<br><br>Private: Injured parties may file civil lawsuits for damages sustained, plus costs and attorney's fees [15 U.S.C. §2072]; Any person may sue to enforce a safety rule, provided certain notice requirements are met and no civil or criminal action is pending, and attorney's fees may be recovered [15 U.S.C. §2073] |
| 2. Failure to provide required labels on consumer products. [15 U.S.C. §§2063(c), 2068(a)(6)] | Same as #1 |
| 3. Failure by manufacturers to certify in writing, or false certification that consumer products conform with applicable safety standards. [15 U.S.C. §§2063(a), 2068(a)(6)] | Same as #1 |

## B. Flammable Fabrics

| | |
|---|---|
| 1. Manufacture, sale, or importation of fabric not conforming with applicable flammability standards. [15 U.S.C. §1192] | Administrative: See Federal Trade Commission, #A1 [15 U.S.C. §1194(a)]<br><br>Civil: Enjoin violations pending entry of an administrative order [15 U.S.C. §1195(a) Seizure and condemnation [15 U.S.C. §1195(b)]<br><br>Criminal: $5,000/one year [15 U.S.C. §1196] |
| 2. Making false guarantees that fabric conforms with flammability standards. [15 U.S.C. §1197(b)] | Administrative, Criminal: See #1 |

## C. Poisons and Hazardous Substances

| | |
|---|---|
| 1. Introduction of misbranded or banned hazardous substances into interstate commerce. 11/ [15 U.S.C. §1263(a)] | Civil: Enjoin violations [15 U.S.C. §1267]; Seizure and condemnation [15 U.S.C. §1265]<br><br>Criminal: First offense -- $500/90 days; Subsequent offenses, or those committed with intent to defraud -- $3,000/one year [15 U.S.C. §1264] |
| 2. Making false guarantees that hazardous substances are not misbranded or banned. [15 U.S.C. §1263(d)] | Same as #1 |
| 3. Failure to prominently label containers of hazardous products with prescribed statements and safety information, 12/ or use of deceptive disclaimers of label statements. [15 U.S.C. §1263(a); 16 C.F.R. §1500.122] | Same as #1 |
| 4. Alteration or destruction of required labels prior to sale. [15 U.S.C. §1263(b)] | Same as #1 |

| | | |
|---|---|---|
| 5. | Delivery of hazardous substances in containers which appear to contain food, drugs, or cosmetics. [15 U.S.C. §1263(f)] | Same as #1 |
| 6. | Failure to use child-resistant containers for ingestible household substances, 13/ or to provide a prescribed warning where such containers are not required. [15 U.S.C. §1471 et seq.] 14/ | Same as #1 |

D. Refrigerators

| | | |
|---|---|---|
| 1. | Introduction of refrigerators not equipped with devices enabling doors to be opened from the inside into interstate commerce. [15 U.S.C. §1211] 15/ | Criminal: $1,000/one year [15 U.S.C. §1212] |

## Footnotes

1. The CPSC was created by the Consumer Product Safety Act of 1972, 15 U.S.C. §2051 et seq.

2. Although most of the Federal Trade Commission's former safety functions are now vested in the CPSC, the respective jurisdiction of each agency is not totally clear. For example, the FTC is presently conducting rulemaking proceedings on flammable plastics.

3. See note 1 supra.

4. 15 U.S.C. §1191 et seq., formerly jointly administered by the Department of Health, Education, and Welfare, the Department of Commerce, and the Federal Trade Commission.

5. 15 U.S.C. §1471 et seq., formerly jointly administered by the Department of Health, Education, and Welfare and the Environmental Protection Agency.

6. 15 U.S.C. §1261 et seq., formerly administered by the Department of Health, Education, and Welfare.

7. 15 U.S.C. §1211 et seq., formerly administered by the Department of Commerce.

8. 15 U.S.C. §2052(a)(1).

9. Civil actions to enjoin violations may be instituted by the CPSC or the U.S. Attorney General.

10. Before criminal penalties may be imposed, the CPSC must provide notice of noncompliance.

11. "Misbranded hazardous substance" and "banned hazardous substance" defined: 15 U.S.C. §1261(p),(q).

12. For general labeling requirements, including placement, conspicuousness, and content, see 16 C.F.R. §1500.121 et seq. Special requirements apply in some instances, e.g., the labeling of electrical toys and articles for use by children. See 16 C.F.R. §1505.3.

13. "Household substances" defined: 15 U.S.C. §1471(2).

14. See also 16 C.F.R. 1700, which concerns poison prevention packaging.

15. See also 16 C.F.R. 1750.

VII. DEPARTMENT OF DEFENSE (1949)

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## VIII. DEPARTMENT OF DEFENSE (1949)

The Department of Defense (DOD) was established as a cabinet level department to preserve and protect the national security of the United States. 1/ Some 2 million active duty and 2-1/2 million reserve personnel serve in the DOD's four major components, the Army, Navy, Marine Corps, and Air Force. 2/ The DOD is not a regulatory agency, but polices consumer transactions involving military personnel by regulating private commercial solicitation on military installations 3/ and establishing minimum standards of fairness applicable to loans and credit sales. 4/

Although members of the military are not subject to wage garnishment for private debts, commanding officers have authority to "process" such claims. Debt "processing" can exert significant pressure on the military debtor to pay, and is an effective collection device for creditors. 5/ However, debt claims may only be "processed" if the creditor files a "Certificate of Compliance" 6/ with appropriate federal and state credit laws and the DOD's "Standards of Fairness," 7/ and the accuracy of that certificate is not challenged.

The DOD also educates military consumers concerning their rights, through the preparation and distribution of an excellent "Information Guidance Series," which provides useful information concerning many important areas of consumer protection. 8/

| Prohibited Practices | Remedies |
|---|---|
| **A. Solicitation on Military Bases** | |
| 1. Solicitation on military bases, unless licensed under applicable laws and otherwise in accordance with installation regulations. [DOD Dir. 1344.7, III.A.2.a] | Administrative: Denial, suspension, or revocation of permission to conduct commercial activities on military bases; Notification of local authorities if appropriate [DOD Dir. 1344.7, III.C] |
| 2. Attempting to solicit sales while recruits, trainees, or transient personnel are a "captive audience." [DOD Dir. 1344.7, III.B.2.a] | Same as #1 |

| | | |
|---|---|---|
| 3. | Offering unfair, improper, or deceptive inducements to purchase. [DOD Dir. 1344.7, III.B.2.f] | Same as #1 |
| 4. | Use of any manipulative, deceptive, or fraudulent device, scheme, or artifice, including misleading advertisements. [DOD Dir. 1344.7, III.B.2.h] | Same as #1 |
| 5. | Falsely representing that the DOD sponsors or endorses a particular company, product, or service. [DOD Dir. 1344.7, III.B.2.i] | Same as #1 |
| 6. | Sale of low quality goods or services. [DOD Dir. 1344.7, III.C.1.c] | Same as #1 |
| 7. | Attempting to sell insurance, except by appointment and otherwise in accordance with DOD regulations. 9/ [32 C.F.R. §276.4(1); DOD Dir. 1344.1, IV.A] | Same as #1 |
| 8. | Engaging in unfair practices concerning the content of insurance policies offered, or failure to comply with applicable insurance laws. [DOD Dir. 1344.1 (Encl 2)] | Same as #1 |

B. Credit Transactions -- Military Personnel

| | | |
|---|---|---|
| 1. | Violation of the Truth in Lending, Fair Credit Billing or Consumer Leasing Acts by creditors. 10/ [32 C.F.R. §43a.7(a); DOD Dir. 1344.7, III.C.1.d, III.E] | Administrative: Denial, suspension, or revocation of permission to conduct commercial activities on military bases; Notification of local authorities if appropriate; Refusal to extend debt processing assistance<br><br>Criminal, Private: See Federal Reserve System, #A1<br><br>Other: See Federal Reserve System, #A10, D2, F4,5 |

| | | |
|---|---|---|
| 2. | Imposition of finance charges in excess of those permitted by state law where the contract is executed. [32 C.F.R. §43a.9(a); DOD Dir. 1344.7, III.C.1.g] | Administrative: See #1 |
| 3. | Charging credit insurance premiums, unless the policy is delivered to the debtor within 30 days. [32 C.F.R. §43a.9(g); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 4. | Providing in contracts for installment payments which are not substantially equal in amount or duration between payments. 11/ [32 C.F.R. §43a.9(h); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 5. | Collection of attorney's fees in the event of nonpayment, unless agreed to in the contract and a legal action is commenced, such fees do not exceed 20% of the remaining debt, and the attorney is not employed by the creditor. 12/ [32 C.F.R. §43a.9(b); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 6. | Making of unreasonable attempts by creditors to cut off consumers' ability to raise defenses against subsequent holders of obligations. 13/ [32 C.F.R. §43a.9(c); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 7. | Failure to permit cancellation of contracts for goods or services at any time prior to delivery without charge. 14/ [32 C.F.R. §43a.9(j); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |

| | | |
|---|---|---|
| 8. | Failure, by banks or credit unions operating on military installations, to comply with the DOD Standards of Fairness prior to executing loan agreements. [32 C.F.R. §43a.7(b); DOD Dir. 1344.7, III.C.1.g; DOD Dir. 1344.9, VII.B] | Same as #2 |
| 9. | Refusal to permit removal of the security if the consumer is under military orders to relocate and proper notice is given, or acceleration of indebtedness for such removal. [32 C.F.R. §43a.9(d); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 10. | Imposition of late charges in excess of the lesser of 5% of the late payment or $5.00, or making more than one such charge per late payment. 15/ [32 C.F.R. §43a.9(e); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 11. | In the event of prepayment, imposition of any penalty or failure to properly rebate the unearned portion of the finance charge. [32 C.F.R. §43a.9(f); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 12. | In the event of default and repossession, failure to follow prescribed procedures, including provision of advance notice, opportunity to redeem, and holding a public sale. [32 C.F.R. §43a.9(i); DOD Dir. 1344.7, III.C.1.g] | Same as #2 |
| 13. | Making claims against members of the military which are patently false and misleading, or which are obviously overstated. 16/ [DOD Dir. 1344.9, III.B] | Administrative: Refusal to provide debt processing assistance |

| | | |
|---|---|---|
| 14. | Communication with the Armed Forces concerning a member's indebtedness, if such contact violates local law relating to employer contacts. 17/ [DOD Dir. 1344.9, III.C] | Same as #13 |
| 15. | Submission of a request for debt processing assistance, unless a Certificate of Compliance is also submitted. [DOD Dir. 1344.9, III.A] | Same as #13 |

C. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Manufacture or sale of cremation urns which imitate those approved by the DOD for deceased members of the Armed Forces. [18 U.S.C. §710] | Criminal: $250/six months [18 U.S.C. §710] |

## Footnotes

1. 5 U.S.C. §101.

2. General Services Administration, United States Government Manual 160 (1976/77 ed.).

3. See 32 C.F.R. 43; DOD Directive 1344.7, Personal Commercial Affairs.

4. See 32 C.F.R. §§43a.7,.9; DOD Directive 1344.9, Indebtedness of Military Personnel.

5. Penalties for the nonpayment of "just" debts by military personnel can be quite severe, including such disciplinary action as discharge from the service or the prevention of promotion.

6. The form for such certificates is set forth in DOD Directive 1344.9 (Encl 1).

7. See 32 C.F.R. §43a.9.

8. The series includes such titles as: Service Families and Consumer Protection (Number 8E-1); Credit and the Service Family (three parts, Numbers 8E-2 to 8E-4); Buying a Mobile Home (Number 8E-5); Equal Credit Opportunity Act (Number 8E-7); Fair Credit Billing Act (Number 8E-10); Cooling-Off-Period for Door-to-Door Sales (Number 8E-19); Air Travelers' Fly-Rights (Number 8E-24).

9. See 32 C.F.R. 276 (types of policies which may be offered and accreditation procedures); DOD Directive 1344.1, Solicitation and Sale of Insurance on Department of Defense Installations.

10. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System. See also DOD Directive 1344.9, V.A.

11. This prohibition of "balloon" payments does not apply to the size of the downpayment.

12. This problem is part of an ongoing rulemaking proceeding which concerns a proposed trade regulation rule on credit practices. See Federal Trade Commission, n. 44.

13. See Federal Trade Commission, #H4,5, which describe an FTC trade regulation rule which also seeks to preserve consumers' claims and defenses.

14. Special provision apply where special orders are made. See 32 C.F.R. §43a.9(j).

15. See note 12 supra.

16. Such deceptive representations are now barred by the Fair Debt Collection Practices Act, if made by debt collectors. See Federal Trade Commission, #I2.

17. Such third party contacts are also prohibited by the Fair Debt Collection Practices Act. See Federal Trade Commission, #I4.

## IX. DEPARTMENT OF ENERGY (1977)

The Department of Energy (DOE), a new cabinet level department, 1/ was established to effectively manage federal energy functions and assure a coordinated national energy policy. It was vested with powers previously held by three predecessor agencies (the Federal Power Commission, 2/ Federal Energy Administration, and Energy Research and Development Administration) as well as energy-related functions previously administered by five federal departments. 3/ The priorities of the DOE contrast with those of its precursors by emphasizing energy conservation and utilization of renewable energy resources as focal energy policy strategies.

Among its duties, the DOE manages energy research and development programs, establishes strategies for fuel allocation during periods of short supply, assures adequate and reliable energy supplies, and implements environmental protection goals in energy programs. Little of what DOE does impacts directly on individual consumers.

The DOE is an important partner in energy efficiency and labeling programs for most consumer products, 4/ which provide vital product information to consumers at the point of sale. Using energy efficiency standards established by the DOE, 5/ the Federal Trade Commission prescribes labeling rules for the covered products, 6/ and enforces them.

| Prohibited Practices | Remedies |
|---|---|
| **Consumer Products -- Energy Efficiency** | |
| 1. Distribution, by manufacturers or labelers, of covered products not conforming with applicable energy efficiency standards. [42 U.S.C. §6302(a)(5)] | Administrative: If imported, denial of entry at customhouse [42 U.S.C. §6301]; if done knowingly, imposition of civil penalty to $100 per violation [42 U.S.C. §6303(a)]<br><br>Civil: Enjoin violations [42 U.S.C. §6304] |
| 2. Representation in writing, on labels, or in broadcast advertising, of the energy consumption of tested products or the cost of energy consumed in a manner which does not fairly reflect the results of approved tests. 7/ [42 U.S.C. §6293(c)] | Private: Individuals may file civil lawsuits against manufacturers, labelers, or federal agencies failing to perform their duties under the law; costs, expert witness fees, and attorney's fees may be awarded to any party [42 U.S.C. §6305] |

| | | |
|---|---|---|
| 3. | Failure to manufacturers of covered products to provide required energy efficiency labels. [42 U.S.C. §§6296(a), 6302 (a)(4)] | Administrative, Civil: See #1<br><br>Private: See #2 |
| 4. | Distribution by manufacturers or labelers of covered products without required energy efficiency labels. [42 U.S.C. §6302(a)(1)] | Same as #3, except that the Federal Trade Commission, not the DOE, is empowered to administratively impose civil penalties or sue to enjoin violations |
| 5. | Removal or obliteration of required energy efficiency labels. 8/ [42 U.S.C. §6302(a)(2)] | Same as #4 |
| 6. | Advertising covered products in catalogs without including all information required in the energy efficiency labels for those products. 9/ [42 U.S.C. §§6296(a), 6302(a)(4)] | Same as #3 |

## Footnotes

1. The DOE became operational October 1, 1977, pursuant to the Department of Energy Organization Act, 42 U.S.C. §7101 et seq.

2. The Federal Power Commission (FPC) is now the Federal Energy Regulatory Commission (FERC). Intended to be a separate collegial body independent of the Secretary of Energy, FERC is a major component of DOE in that it administers most of the functions formerly in the FPC.

3. These are the Departments of Commerce, Defense, Housing and Urban Development, Interior, and Transportation.

4. "Consumer product" define: 42 U.S.C. §6291(a)(1). Covered products include refrigerators, freezers, dishwashers, clothes washers and dryers, water heaters, air conditioners, home heating equipment, televisions, furnaces, kitchen ranges and ovens, humidifiers, and dehumidifiers; automobiles are excluded. 42 U.S.C. §6292(a).

5. The DOE, in turn, uses test procedures developed by the National Bureau of Standards of the Department of Commerce. 42 U.S.C. §6293.

6. See 42 U.S.C. §6294. Until labeling rules under this section become effective, the Federal Trade Commission Act applies. 42 U.S.C. §6294(g).

7. This prohibition applies to manufacturers, distributors, retailers, and labelers.

8. Id.

9. Id. The effective date of this prohibition is deferred until the publication of a new catalog supercedes the effective date of the requirement. Also, the FTC may modify such requirement.

X. ENVIRONMENTAL PROTECTION AGENCY (1970)

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## X. ENVIRONMENTAL PROTECTION AGENCY (1970)

The Environmental Protection Agency (EPA) is an independent agency which promulgates and enforces environmental standards controlling air, water, solid waste, pesticide, noise, and radiation pollution. 1/ The EPA also advises other federal agencies concerning the environmental impact of their programs, and integrates the efforts of state and local government, private and public groups, individuals, and educational institutions, with those of the federal government.

Relevant EPA initiatives arise in the enforcement of motor vehicle emission standards, control of toxic substances, noise abatement, and energy conservation. These often parallel or complement the functions of such other agencies as the Departments of Commerce, Energy, and Transportation, the Consumer Product Safety Commission, Federal Trade Commission, and Food and Drug Administration. In an unusal consumer protection venture, the EPA has begun a two-year program aimed at formulating strict production and advertising standards for home water filters. 2/

| Prohibited Practices | Remedies |
|---|---|
| **A. Motor Vehicles and Engines** | |
| 1. Failure to affix or maintain, in a prominent place, prescribed labels indicating automobile fuel economy, estimated annual fuel costs, range of fuel economy of comparable vehicles, and other required information, and stating that written information concerning other automobiles made in the same model year is available from the dealer. 3/ [15 U.S.C. §2006(a)] | Administrative, Civil: See Federal Trade Commission, #A1 4/ [15 U.S.C. §2006(c)(1)]<br><br>Criminal: $1,000 per affected automobile [15 U.S.C. §2006(c)(1)] |

| | |
|---|---|
| 2. Sale, offer, delivery, or introduction into interstate commerce by manufacturers, or importation by anyone, of new motor vehicles or engines subject to EPA standards governing emission of air pollutants, 5/ unless covered by effective certificates of conformity. 6/ [42 U.S.C. §1857f-2(a)(1)] | Administrative: If imported, denial of entry at customhouse [42 U.S.C. §1857f-2(b)(2)]<br><br>Civil: Enjoin violations [42 U.S.C. §1857f-3]; Civil penalty to $10,000 per vehicle or engine [42 U.S.C. §1857f-4]<br><br>Private: Any person may file a civil lawsuit to restrain violation of emission standards or to order government agencies to perform legal duties, provided certain notice requirements are met and no civil compliance action is pending; costs, expert witness fees, and attorney's fees may be awarded to any party [42 U.S.C. §1857h-2] |
| 3. Sale or lease, by a manufacturer, of any covered motor vehicle or engine, unless the manufacturer:<br><br>a. Warrants to the purchaser and each subsequent purchaser that it is designed, built, and equipped to conform with EPA standards and is free from defects causing nonconformity for its "useful life;" 7/<br><br>b. Furnishes written instructions for maintenance and use to assure proper functioning of emission control devices and systems;<br><br>c. Indicates, by permanent label or tag, that it is covered by a valid certificate of conformity assuring satisfaction of EPA standards, and containing any other required information; and | Administrative, Civil: See #2 |

| | | |
|---|---|---|
| | d. If the cost or value of emission control devices or systems is included in any advertisement, includes the cost or value attributed to them by the Secretary of Labor.<br><br>[42 U.S.C. §§1857f-2(a)(4), f-5a(a),(c)(3), (e)] | |
| 4. | Removal of or rendering inoperative, by any person, any required emission control device or element of design, including manufacturers or dealers after sale or delivery.<br>[42 U.S.C. §1857f-2(a)(3)] | Same as #2, except that each vehicle or engine does not necessarily constitute a separate offense for the imposition of civil penalties |
| 5. | Failure, by manufacturers, in the case of equipment likely to be significantly impaired by the use of leaded gasoline, to permanently affix two or more warning labels meeting EPA specifications.<br>[40 C.F.R. §80.24] | Civil: Civil penalty to $10,000 for each day a violation continues<br>[40 C.F.R. §80.5] |

B. Fuels -- Motor Vehicle 8/

| | | |
|---|---|---|
| 1. | Sale, offer, or introduction into interstate commerce of regulated motor vehicle fuels and fuel additives, unless registered with the EPA. 9/<br>[42 U.S.C. §1857f-6c] | Civil: Civil penalty to $10,000 for each day a violation continues<br>[42 U.S.C. §1857f-6c] |
| 2. | Distribution or sale of gasoline represented as unleaded, unless it meets EPA requirements for unleaded gasoline.<br>[42 U.S.C. §1857f-6c(c)(1); 40 C.F.R. §§80.21, .22] | Same as #1<br>[40 C.F.R. §80.5] |

C. Consumer Products -- Noise Emitting and Reducing 10/

| | |
|---|---|
| 1. Distribution in interstate commerce, by manufacturers, of new products not conforming with EPA noise emission standards. [42 U.S.C. §4909(a)(1)] | Administrative: Order specifying any relief necessary to protect the public health and welfare [42 U.S.C. §4910(d)]<br><br>Civil: Enjoin violations [42 U.S.C. §4910(c)]<br><br>Criminal: First offense -- $25,000/one year; 11/ Subsequent offenses -- $50,000/two years; Wilful failure to comply with administrative orders may also result in these penalties [42 U.S.C. §4910(a)]<br><br>Private: Any person may file a civil lawsuit to restrain violation of any noise control requirement or to order government agencies to perform legal duties, provided certain notice requirements are met and no civil compliance action is pending; costs, expert witness fees, and attorney's fees may be awarded to any party. [42 U.S.C. §4911] |
| 2. Failure to warrant to the purchaser and each subsequent purchaser that covered products are designed, built, and equipped to conform with EPA noise emission standards. [42 U.S.C. §4905(d)(1)] | Administrative: See #1<br><br>Criminal: See #1, but only for Wilful failure to comply with administrative orders |
| 3. Distribution of products not complying with EPA regulations concerning product labeling which discloses noise emission levels or noise-reducing effectiveness. 12/ [42 U.S.C. §§4907(b), 4909(a)(4)] | Administrative, Civil: See #1<br><br>Criminal: See #2<br><br>Private: See #1 |

| | | |
|---|---|---|
| 4. | If the cost or value of noise emission control devices or systems is included in any advertisement, failure to include the cost or value attributed to them by the Secretary of Labor. [42 U.S.C. §4905(d)(3)] | Same as #2 |
| 5. | Removal of or rendering inoperative, by any person, any required noise emission control device or element of design. [42 U.S.C. §4909(a)(2)] | Same as #3 |

D. Poisons -- Pesticides

| | | |
|---|---|---|
| 1. | Failure to register any economic poison, 13/ including insecticides and rodenticides, with the EPA. [7 U.S.C. §135b(a)] | Administrative: If imported, denial of entry at customhouse [7 U.S.C. §135h]<br><br>Civil: Seizure and condemnation, including assessment of costs and storage charges [7 U.S.C. §135g]<br><br>Criminal: First offense -- $500; Subsequent offenses -- $1,000/one year [7 U.S.C. §135f(b)] |
| 2. | Failure to register any pesticide, 14/ or to register as a pesticide producer, with the EPA. [7 U.S.C. §§136a, 136e] 15/ | Administrative: If imported, denial of entry at customhouse [7 U.S.C. §136o]; "Stop sale, use, or removal" order [7 U.S.C. §136k(a)]; Civil penalty to $5,000 per violation [7 U.S.C. §136 1(a)]<br><br>Civil: Seizure and condemnation, including assessment of costs and storage charges [7 U.S.C. §136k]<br><br>Criminal: $25,000/one year [7 U.S.C. §1361(b)] |

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|---|---|
| 3. Distribution, sale, offer, shipment, or delivery of economic poisons which are:<br><br>a. Unregistered, or if claims on directions for use or composition differ from representations made in the registration request;<br><br>b. Adulterated or misbranded;<br><br>c. Not in the registrant's or manufacturer's unbroken container, the outside of which is labeled with specified information;<br><br>d. If toxic, not labeled with a skull and crossbones insignia, the word "poison" prominently and in red on a contrasting background, and the antidote; or<br><br>e. In certain cases, not distinctively colored or discolored.<br><br>[7 U.S.C. §135a(a)] | Administrative: See #1; Suspension or cancellation of registration<br>[7 U.S.C. §135b(c)]<br><br>Civil: See #1<br><br>Criminal: See #1, except that violations of "a" are subject only to $1,000 fines<br>[7 U.S.C. §135f(a)] |
| 4. Distribution, sale, offer, shipment, or delivery of pesticides which are:<br><br>a. Unregistered, or if claims on directions for use or composition differ from representations made in the registration request;<br><br>b. Adulterated or misbranded; 16/ or<br><br>c. In certain cases, not distinctively colored or discolored.<br><br>[7 U.S.C. §136j(a)(1)] | Administrative: See #2; Suspension or cancellation of registration, plus possible indemnity payments, or change of classification<br>[7 U.S.C. §§136d, 136m]<br><br>Civil, Criminal: See #2 |

| | | |
|---|---|---|
| 5. | Removal, alteration, or destruction required labels. [7 U.S.C. §§135a(c)(1), 136j(a)(2)(A)] | Administrative, Criminal: See #3,4 |
| 6. | Addition to, or removal from, economic poisons of substances to defeat the legislative purposes of these provisions. [7 U.S.C. §135a(c)(1)] | Administrative: See #3<br>Civil, Criminal: See #1 |

E. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Distribution, sale, offer, shipment, or delivery of misbranded devices 17/ intended to trap, destroy, or repel insects, rodents, and the like. [7 U.S.C. §§135a(a)(5), 136j(a)(1)(F)] | Administrative: See #D3,4<br>Civil, Criminal: See #D1,2 |

## Footnotes

1. The EPA was established pursuant to Reorganization Plan No. 3 of 1970, effective December 2, 1970.

2. This program followed reports that sales presentations for home water filtration or purification products sometimes include false or misleading representations. Washington Post, July 14, 1977, at E14, col. 1.

3. In determining the form and content of labels, and the manner in which they are to be affixed, the EPA consults with the Federal Trade Commission, Department of Transportation, and Department of Energy. 15 U.S.C. §2006(e) Present labeling regulations are codified in 40 C.F.R. §§600.301-77 to .315-77. However, feeling that the present labels are too wordy and duplicative of otherwise available information, the EPA proposed interim rules limiting the required text and heightening their visual impact, which would apply to 1978 (optional) and later model years. 42 Fed. Reg. 37,812(1977).

   Regulations concerning the fuel economy of motor vehicles are codified in 40 C.F.R. 600. As regards the failure by manufacturers to meet minimum average fuel economy standards, see Department of Transportation, #A2. See also 16 C.F.R. 259, which is a Federal Trade Commission guide concerning fuel economy advertising for new automobiles.

   The written information referred to is provided in a booklet prepared by the EPA, which contains comparative fuel economy information for automobiles in each model year, including average fuel costs. 15 U.S.C. §2006(b) As regards the requirement that dealers provide copies of the booklet on request, see Department of Transportation, #A10; 40 C.F.R. §§600.401-77 to .407-77.

4. However, 15 U.S.C. §45(m) does not apply. 15 U.S.C. §2006(c)(1).

5. See 42 U.S.C. §1857f-1; 40 C.F.R. 85.

6. See generally 40 C.F.R. 85, 86, which concern the control of air pollution from new motor vehicles and engines.

7. "Useful life" generally means five years or 50,000 miles, whichever occurs first. 42 U.S.C. §1857f-1(d) EPA regulations may also require the provision of warranties on emission control devices. 42 U.S.C. §1857f-5a(b) If the EPA determines that a substantial number of any class or category of vehicles or engines, though properly used and maintained, do not conform it may additionally require that the manufacturer submit a plan for remedying the nonconformity at its expense and take other steps if the plan is not acceptable. 42 U.S.C. §1857f-5a(c)(1), (2).

8. The EPA is also required to prescribe standards for containers of new, used, and recycled oil pertaining to disposal after use. 42 U.S.C. §6363. See also Federal Trade Commission, #J3, n. 65.

9. As to the registration of fuel additives, see 40 C.F.R. 79.

10. An Office of Noise Abatement and Control was established within the EPA to investigate and study the effects of noise on public health and welfare. 42 U.S.C. §1858 Under the Noise Control Act of 1972, 42 U.S.C. §4901 et seq., the EPA is to propose regulations establishing product noise emission standards, and to designate those products which emit noise capable of adversely affecting the public or which are sold wholly or in part on the basis of their effectiveness in reducing noise. 42 U.S.C. §§4905, 4907(a) At the time this publication was prepared, relevant implementing rules had not yet been enacted (the Code of Federal Regulations used was current through July 1, 1977); the listed prohibited practices and remedies will therefore apply upon enactment of such regulations.

11. Each day a violation of 42 U.S.C. §4909(a) continues constitutes a separate violation. 42 U.S.C. §4910(b).

12. Labeling requirements concerning the noise emission of products have been proposed. See 42 Fed. Reg. 31,722, 31,730, 41,140 (1977).

13. "Economic poison" defined: 7 U.S.C. §135(a).

14. "Pesticide" defined: 7 U.S.C. §136(u); 40 C.F.R. §162.3(ff).

15. See also 40 C.F.R. §§162.5, 167.2(a).

16. See 40 C.F.R. §162.10, which governs content, prominence and legibility, language, and placement of pesticide labels, as well as false or misleading statements.

17. See also 40 C.F.R. §162.15, which describes covered devices.

XI. FARM CREDIT ADMINISTRATION (1971)

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## XI. FARM CREDIT ADMINISTRATION (1971)

The Farm Credit Administration (FCA), a small independent regulatory agency, charters, examines, and supervises member banks and associations of the cooperative Farm Credit System. 1/ The System provides credit and related services at the lowest reasonable cost to farmers, ranchers, and their cooperatives, as well as to rural residents for the purchase, construction, or improvement of rural homes.

These objectives are accomplished by the Federal Land Banks, 2/ which make long-term loans on farm or rural real estate through Federal Land Bank Associations; Federal Intermediate Credit Banks, 3/ which provide short and intermediate term loans to Production Credit Associations 4/ and other institutions financing farmers, ranchers, and rural homeowners; and Banks for Cooperatives, 5/ which make loans directly to agricultural cooperatives (and do not make loans to consumers). Most funds from which all these loans are made are obtained from the sale of securities to investors in the nation's money markets. 6/

| Prohibited Practices | Remedies |
|---|---|
| **A. Farm Credit Institutions** | |
| 1. Charging interest in excess of that approved by the FCA, 7/ or, in the case of Production Credit Corporations, in excess of that established under programs approved by the FCA. [12 U.S.C. §§2015, 2075, 2096] | Administrative: Supervisory action, such as requiring prior approval of loans, or, if a bank, refusal to approve the compensation of the chief executive officer or salary scale for employees [12 U.S.C. §2252]<br><br>Civil: The Department of Justice may sue to enjoin violations or for other appropriate relief |
| 2. Failure to promptly notify loan applicants of action and, if reduced or denied, to include the reasons for reduction or denial. [12 U.S.C. §2201] | Same as #1 |

| | | |
|---|---|---|
| 3. | Acceptance of fees or gifts by officers, employees, or others associated with Federal Land Banks or Federal Land Bank Associations. [18 U.S.C. §216] | Criminal: $5,000/one year [18 U.S.C. §216] |
| 4. | Making any false representation concerning farm loan bonds, credit bank debentures, or related obligations. [18 U.S.C. §1013] | Criminal: $500/one year [18 U.S.C. §1013] |
| 5. | Violation of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts by Federal Land Bank Associations, Federal Intermediate Credit Banks, or Production Credit Associations. 8/ [15 U.S.C. §1607(a)(6)] | Administrative: All powers usually exercised by the FCA [15 U.S.C. §1607(b)]<br><br>Criminal, Private: See Federal Reserve System, #A1<br><br>Other: See Federal Reserve System, #A10, D2, F4,5 |
| 6. | Violation of the Equal Credit Opportunity Act by Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, or Production Credit Associations. 9/ [15 U.S.C. §1691c(a)(7)] | Administrative: All powers usually exercised by the FCA [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |
| 7. | Engaging in any discriminatory practice in lending or other services, 10/ including use of advertisements which imply or suggest discriminatory policies, or failure to post "Equal Housing Lender" posters in each office. [12 C.F.R. §§613.3140, .3150, .3160, .3170] | Same as #1 |

B. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Deceptive use of the words "Federal Intermediate Credit Bank" as part of any business name. [18 U.S.C. §709] | Civil: Enjoin violations [18 U.S.C. §709]<br><br>Criminal: Business entity -- $1,000 Individual -- $1,000/one year [18 U.S.C. §709] |

## Footnotes

1. See generally the Farm Credit Act of 1971, 12 U.S.C. §2001 et seq.; FCA, The Cooperative Farm Credit System - Its Functions, Organization, and Development.

2. See FCA Circular 35, Federal Land Banks - How They Operate (1974).

3. See FCA Circular 7, Federal Intermediate Credit Banks...How They Operate.

4. See FCA Circular 37, Production Credit Associations - How They Operate (1973).

5. See FCA Circular 40, Banks for Cooperatives - How They Operate (1973).

6. See FCA Circular 50, An Investor's Guide to Farm Credit Securities.

7. Federal Land Banks: 12 U.S.C. §2015; Federal Intermediate Credit Banks: 12 U.S.C. §2075, 12 C.F.R. §614.4310; Production Credit Associations: 12 U.S.C. §2096(b), 12 C.F.R. §614.4320. See also 12 U.S C. §2252(9); 12 C.F.R. §614.4280.

8. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System.

9. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

10. Prohibited discrimination is that which is based on race, color, religion, national origin, sex, marital status, or age.

XII. FEDERAL COMMUNICATIONS COMMISSION (1934)

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B. Threatening or Harassing Communications..... 78

C. Other Prohibited Practices..... 79

## XII. FEDERAL COMMUNICATIONS COMMISSION (1934)

The Federal Communications Commission (FCC) is an independent agency 1/ regulating three major categories of interstate and foreign communications: 2/

- Broadcast services, such as radio and television; 3/
- Nonbroadcast radio services, including citizen band radios; 4/ and
- Common carrier services, particularly telephone and telegraph. 5/

FCC regulation of broadcast services is particularly extensive, as the agency assigns band frequencies, power, hours of operation, and call letters, 6/ licenses stations and operators, and oversees the technical aspects of broadcasting. 7/

| Prohibited Practices | Remedies |
|---|---|
| **A. Fraudulent Communications** | |
| 1. Use of wire, radio, or television communication to execute any scheme to defraud or obtain money or property by means of false or fraudulent representations. [18 U.S.C. §1343] | Administrative: Suspension of operator license [47 U.S.C. §303(m)(1)]; Revocation of station license [47 U.S.C. §312(a)]; Cease and desist order [47 U.S.C. §312(b)]<br><br>Civil: If a station, forfeiture of $1,000 per day, to $10,000 in any year [47 U.S.C. §§503(b), 504] 8/<br><br>Criminal: $1,000/five years [18 U.S.C. §1343]<br><br>Private: Damaged individuals may sue to enforce administrative orders [47 U.S.C. §401(b)] |
| 2. Broadcast of false or deceptive advertisements or information. 9/ [47 U.S.C. §303(m)(1)(D)] 10/ | Administrative: See #1; Award actual damages to individuals, plus attorney's fees, if the person elects to proceed administratively rather than judicially [47 U.S.C. §§206,207,209] |

| | | |
|---|---|---|
| | | Civil: See #1; U.S. Attorney General may sue to compel compliance [47 U.S.C. §401(a)]<br><br>Criminal: First offense -- $1,000/one year; Subsequent offenses -- $10,000/two years [47 U.S.C. §501]; For violation of FCC rule or restriction, additional $500 per day [47 U.S.C. §502]<br><br>Private: Damaged individuals may sue to enforce administrative orders, and recover attorney's fees if such orders were for the payment of money [47 U.S.C. §§401(b), 407]; Individuals may file civil lawsuits for actual damages, plus attorney's fees [47 U.S.C. §206] |
| 3. | Use of subliminal techniques in television advertisements. 11/ [47 U.S.C. §303(m)(1)(D)] | Same as #2 |
| 4. | Engaging, by broadcasters, in deceptive practices in conducting contests of knowledge, skill, or chance, such as influencing or predetermining the outcome. [47 U.S.C. §509(a)] | Administrative, Civil: See #2<br><br>Criminal: $10,000/one year [47 U.S.C. §509(c)]; For violation of FCC rule or restriction, additional $500 per day [47 U.S.C. §502]<br><br>Private: See #2 |

B. Threatening or Harassing Communications

| | | |
|---|---|---|
| 1. | Making anonymous or repeated telephone calls with the intent of annoying, harassing, or threatening the person called. 12/ [47 U.S.C. §223] | Administrative: Cease and desist order [47 U.S.C. §312(b)]; Award actual damages to individuals, plus attorneys's fees, if the person elects to proceed |

| | |
|---|---|
| | administratively rather than judicially<br>[47 U.S.C. §§206, 207, 209]<br><br>Civil: U.S. Attorney General may sue to compel compliance<br>[47 U.S.C. §401(a)]<br><br>Criminal: $500/six months<br>[47 U.S.C. §223]; For violation of FCC rule or restriction, additional $500 per day<br>[47 U.S.C. §502]<br><br>Private: See #A2<br><br>Other: Since such telephone use violates tariffs filed with the FCC, telephone companies are required to take appropriate steps to enforce their tariffs, including discontinuance of service 13/ |
| 2. Transmission by interstate communication, with intent to extort, of threats to injure any person.<br>[18 U.S.C. §875(b),(c)] | Criminal: $1,000/five years<br>[18 U.S.C. §875(c)]; If done with intent to extort, $5,000/20 years<br>[18 U.S.C. §875(p)] |
| 3. Tramsmission by interstate communication, with intent to extort, threats to injure the property or reputation of any person, or accuse any person of a crime.<br>[18 U.S.C. §875(d)] | Criminal: $500/two years<br>[18 U.S.C. §875(b)] |

C. Other Prohibited Practices

| | |
|---|---|
| 1. Overcharging or engaging in other unjust or discriminatory practices by telephone or telegraph companies.<br>[47 U.S.C. §202(a)] | Administrative: See #B1<br><br>Civil: See #B1; Forfeiture of $500 per offense, plus $25 a day<br>[47 U.S.C. §202(c)]<br><br>Criminal: See #A2 |

| | | |
|---|---|---|
| | | Private: See #A2; Individuals may sue to obtain services not received but provided to others [47 U.S.C. § 406] |
| 2. | Broadcast of advertisements or information concerning lotteries, gift enterprises, or similar schemes. 14/ [18 U.S.C. §1304] | Administrative: Cease and desist order [47 U.S.C. §312(b)]; Revocation of station license [47 U.S.C. §312(a)]<br><br>Civil: See #A1<br><br>Criminal: $1,000/one year [18 U.S.C. §1304]; For violation of FCC rule or restriction, additional $500 per day [47 U.S.C. §502]<br><br>Private: See #A1 |
| 3. | Broadcast of advertisements for cigarettes or little cigars. 15/ [15 U.S.C. §1335] | Civil: U.S. Attorney General may sue to enjoin violations [15 U.S.C. §1339]<br><br>Criminal: $10,000 [15 U.S.C. §1338] |
| 4. | Failure, by a cable television system, to disclose that payment was received for any presented matter. [47 C.F.R. §76.221(a)] | Administrative: Cease and desist order [47 U.S.C. §312(b)]<br><br>Civil, Criminal: See #A2 |
| 5. | Broadcast of commercial advertisements by subscription television stations. 16/ [47 C.F.R. §76.225(e)] | Same as #4 |
| 6. | Manufacture of sale of CB radios not able to receive all available frequencies or not meeting other technical requirements. [47 C.F.R. §95.55(c)] | Administrative: See #4<br><br>Civil: See #B1<br><br>Criminal: See #A2<br><br>Private: See #A1 |
| 7. | Failure, by sellers, to furnish copies of FCC rules governing CB radios to all purchasers of such units. 17/ | Same as #6 |

## Footnotes

1. The FCC was created by the Communications Act of 1934, 47 U.S.C. §151. See generally FCC Information Bulletin 4, The FCC in Brief (1977); FCC Information Bulletin 10, Regulation of Wire and Radio Communication (1976).

2. Purely intrastate communication services are regulated by state utility commissions.

3. See FCC Information Bulletin 3, Broadcast Services (1977); FCC Information Bulletin 12, Educational Television (1977); FCC Information Bulletin 17, Educational Radio (1977).

4. See FCC Information Bulletin 7, Safety and Special Radio Services (1977).

5. See FCC Information Bulletin 8, Common Carrier Services (1976).

6. See FCC Information Bulletin 9, Station Identification and Call Signs (1977); FCC Information Bulletin 11, Frequency Allocation (1977).

7. While the FCC does not license cable television systems (this is done at the local level), it regulates such systems once they become operational. The FCC does not regulate closed circuit television in any way.

8. Before this penalty may be imposed, the FCC must provide a "written notice of apparent liability."

9. The Federal Trade Commission has primary jurisdiction to act against sponsors. The FCC holds broadcast licensees responsible, however, for exercising reasonable diligence to prevent deceptive use of their facilities. A cooperative arrangement exists between the two agencies.

10. See 47 C.F.R. §13.68.

11. Subliminal advertisements are considered deceptive per se, inconsistent with the obligations of television broadcast licensees, and contrary to the public interest. FCC Broadcast Bureau Publication 8310-100, The FCC and Broadcasting 15(1976).

12. This prohibition applies to telephone calls made in the District of Columbia or in interstate or foreign communication. Prohibited practices, many of which occur in the course of debt collection activities, include calls: 1) made at odd hours; 2) to friends, neighbors, employers, and other third parties; 3) falsely stating that credit ratings will be harmed

or that legal process is about to be served; 4) demanding payments for amounts not owed; 5) to places of employment; and 6) misrepresenting the terms of contracts. Such practices often involve use of interstate toll and Wide Area Telephone Service (WATS). FCC Release, Use of Telephone for Debt Collection Purposes, 35 Fed. Reg. 116, 9,873 (1970).

13. Telephone company tariffs forbid use of telephones for "calls, anonymous or otherwise, if in a manner reasonably to be expected to frighten, abuse, torment, or harass another," or calls that "interfere unreasonably with the use of the service by one or more other customers," or calls for any "unlawful purpose."

14. This prohibition does not apply to state lotteries. 47 C.F.R. §73.1211(c). See also 47 C.F.R. §§73.121(a) (general), 73.122 (standard broadcast stations), 73.292 (FM broadcast stations), 73.656 (television stations), 76.213, 76.215(a)(11), 76.253(b)(3) (cable television service).

15. The law does not prohibit advertising other tobacco products or the use of any tobacco products by actors or announcers in broadcasts.

16. The promotion of other programs for which a charge is made is permitted.

17. FCC Docket 20120, December 14, 1976 (effective January 27, 1977); [illegible]I v. FCC, 515 F.2d 385 (D.C. Cir. 1975).

XIII. FEDERAL DEPOSIT INSURANCE CORPORATION (1933)

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## XIII. FEDERAL DEPOSIT INSURANCE CORPORATION (1933)

The Federal Deposit Insurance Corporation (FDIC) is an independent regulatory agency established to maintain public confidence in the nation's banks and to prevent large-scale depositor losses. 1/ The FDIC provides federal bank deposit insurance coverage, up to a limit of $40,000 per depositor, for national banks, state bank members of the Federal Reserve System, and state banks applying for such insurance and meeting specified qualifications. 2/ The FDIC also assists financially troubled banks and facilitates bank mergers which will reduce risks of financial failure. 3/

The FDIC exercises general supervisory responsibilities over FDIC-insured banks not subject to regulation by the Federal Reserve Board or the Office of the Comptroller of the Currency, i.e., insured banks which are not members of the Federal Reserve System, national banks, or District of Columbia commercial banks.

| Prohibited Practices | Remedies |
|---|---|
| **FDIC-Regulated Banks** | |
| 1. Engaging in unfair or deceptive acts or practices affecting consumers. [15 U.S.C. §57a(f)(2)(C)] | Administrative: Termination of FDIC-insured status [15 U.S.C. §57a(f)(2)]; All other powers usually exercised by the FDIC [15 U.S.C. §57a(f)(3)] |
| 2. Use of deceptive advertisements concerning interest paid on bank deposits. [12 U.S.C. §1828] 4/ | Administrative: Cease and desist order; Order the taking of affirmative action to correct conditions resulting from violations; Termination of insured status; [12 U.S.C. §1818]; Removal of bank officials [12 U.S.C. §1818(e)<br><br>Civil: Civil penalty of $100 per day per violation [12 U.S.C. §1828(a)] |
| 3. Extension of credit, lease or sale of property, or furnishing of a service subject to a requirement that the customer obtain any additional credit, property, or service from the bank or a related entity. [12 U.S.C. §1972(1),(2)] | Civil: Enjoin violations [12 U.S.C. §1973]<br><br>Private: Individuals may file civil lawsuits for three times the actual damages sustained, plus costs and attorney's fees, or for injunctions against threatened loss or damage [12 U.S.C. §§1975, 1976] |

| | | |
|---|---|---|
| 4. | Requiring a customer to provide any additional credit, property, or service other than those related to and usually provided in connection with the loan or service provided. [12 U.S.C. §1972(3),(4)] | Same as #3 |
| 5. | Requiring that a customer not obtain some other credit, property, or service from a competitor. [12 U.S.C. §1972(5)] | Same as #3 |
| 6. | Use of advertisements concerning interest, unless a statement denoting FDIC membership is included. [12 U.S.C. §1828(a),(g)] 5/ | Same as #2 |
| 7. | Failure to display the official FDIC membership sign at each location where insured deposits are accepted. [12 U.S.C. §1828(a)] | Same as #2 |
| 8. | Advertisement, sale, or other involvement with lottery tickets. [12 U.S.C. §1829a(a)] | Administrative: See #2 |
| 9. | Acceptance of fees or gifts by officers or employees of insured banks for procuring loans or other services. [18 U.S.C. §215] | Administrative: See #2<br><br>Civil: Directors and officers may be personally liable for damages [12 U.S.C. §503]<br><br>Criminal: $5,000/one year [18 U.S.C. §215] |

| | | |
|---|---|---|
| 10. | Violation of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts. 6/ [15 U.S.C. §1607(a)(1)(C)] | Administrative: All powers usually exercised by the FDIC [15 U.S.C. §1607(b)]<br><br>Criminal, Private: See Federal Reserve System, #A1<br><br>Other: See Federal Reserve System, #A10, D2, F4,5 |
| 11. | Violation of the Fair Credit Reporting Act. 7/ [15 U.S.C. §1681s(b)(1)(C)] | Administrative: All powers usually exercised by the FDIC [15 U.S.C. §1681s(c)]<br><br>Criminal, Private: See Federal Reserve System, #B1 |
| 12. | Violation of the Equal Credit Opportunity Act. 8/ [15 U.S.C. §1691c(a)(1)(C)] | Administrative: All powers usually exercised by the FDIC [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |
| 13. | Violation of the Fair Debt Collection Practices Act 9/ [15 U.S.C. §1692 l(b)(1)(C)] | Administrative, Civil, Criminal: All authority conferred on the FDIC by any law, except the promulgation of regulations [15 U.S.C. §1692 l(c)]<br><br>Private: See Federal Trade Commission, #I1 |

## Footnotes

1. The principal law administered by the FDIC is the Federal Deposit Insurance Act, 12 U.S.C. §1811 et seq.

2. See generally FDIC, Your Insured Deposit.

3. The principal methods that have been used by the FDIC to protect depositors in failing insured banks are directly paying off insured deposits and assisting in the absorption of failing institutions by other banks.

4. See 12 C.F.R. §329.8, which sets forth specific guidelines for such advertisements.

5. See 12 C.F.R. 328 concerning the advertising of FDIC membership.

6. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System.

7. The Fair Credit Reporting Act is discussed under Federal Reserve System.

8. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

9. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission. See also Federal Reserve System, n. 35.

XIV. FEDERAL HOME LOAN BANK BOARD (1932)

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## XIV. FEDERAL HOME LOAN BANK BOARD (1932)

The Federal Home Loan Bank Board (FHLBB) is an independent regulatory agency that supervises the operations of savings and loan associations, the major private source of capital for home building, purchasing, and rehabilitation. 1/ The FHLBB has three major components: The Federal Home Loan Bank System, which provides a reservoir of credit for member institutions; 2/ the Federal Savings and Loan Insurance Corporation (FSLIC), which increases the money supply available for home mortgages by insuring savings accounts, up to $40,000 per saver, maintained with all federal savings and loan associations and in FSLIC-insured state-chartered savings and loan associations. 3/ The Federal Home Loan Mortgage Corporation operates a secondary market principally in conventional mortgager.

| Prohibited Practices | Remedies |
|---|---|
| **A. Savings and Loan Associations 4/** | |
| 1. Use, by federal or state-chartered savings and loan associations, of deceptive advertisements concerning services, contracts, investments, or financial condition. [12 C.F.R. §563.27] | Administrative: Cease and desist order; 5/ Suspension or termination of FSLIC-insured status; 6/ Removal of officials [12 U.S.C. §1437(a)] 7/ |
| 2. Use, by federal or state-chartered savings and loan associations, of deceptive advertisements or representations concerning the manner in which accounts are insured. [12 U.S.C. §1725(g)] | Administrative: See #1<br>Criminal: $1,000/one year [12 U.S.C. §1725(g)] |
| 3. Use, by federal or state-chartered savings and loan associations, of advertisements concerning interest on savings accounts, unless in conformity with guidelines for required information and form, including a statement denoting FSLIC membership. [12 C.F.R. §526.6] | Same as #1 |

| | | |
|---|---|---|
| 4. | In the case of home mortgage loans, charging, by any member of the Federal Home Loan Bank System, 8/ of a net cost, inclusive of all charges, in excess of the legal interest rate. [12 U.S.C. §1425] | Same as #1 |
| 5. | Charging, by federal savings and loan associations, of membership or other improper fees relating to savings accounts. [12 C.F.R. §545.1] | Same as #1 |
| 6. | Failure, by federal savings and loan associations, to include all required provisions in savings certificates in easily read type. [12 C.F.R. §545.1-4] | Same as #1 |
| 7. | Failure, by any member of the Federal Home Loan Bank System, to provide a written description of the penalty imposed for early withdrawal of savings certificates. [12 C.F.R. §526.6-1] | Same as #1 |
| 8. | Advertisement, sale, or other involvement with lottery tickets by federal or state-chartered savings and loan associations. [12 U.S.C. §1730c] | Same as #1 |
| 9. | Failure, by federal savings and loan associations, to include "Federal Savings and Loan Association" in their corporate titles. [12 C.F.R. §543.1] | Same as #1 |

| | | |
|---|---|---|
| 10. | Violation of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts by any member of the Federal Home Loan Bank System. 9/ [15 U.S.C. §1607(a)(2)] | Administrative: All powers usually exercised by the FHLBB [15 U.S.C. §1607(b)]<br><br>Criminal, Private: See Federal Reserve System, #A1<br><br>Other: See Federal Reserve System, #A10, D2, F4,5 |
| 11. | Violation of the Fair Credit Reporting Act by any member of the Federal Home Loan Bank System. 10/ [15 U.S.C. §1681s(b)(2)] | Administrative: All powers usually exercised by the FHLBB [15 U.S.C. §1681s(c)]<br><br>Criminal, Private: See Federal Reserve System, #B1 |
| 12. | Violation of the Equal Credit Opportunity Act by any member of the Federal Home Loan Bank System. 11/ [15 U.S.C. §1691c(a)(2)] | Administrative: All powers usually exercised by the FHLBB [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |
| 13. | Violation of the Fair Debt Collection Practices Act by any member of the Federal Home Loan Bank System. 12/ [15 U.S.C. §1692 l(b)(2)] | Administrative, Civil, Criminal: All authority conferred on the FHLBB by any law, except the promulgation of regulations [15 U.S.C. §1692 l(c)]<br><br>Private: See Federal Trade Commission, #I1 |

B. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Deceptive use of the words "Federal Home Loan Bank" as part of a business name. [18 U.S.C. §709] | Civil: Enjoin violations [18 U.S.C. §709]<br><br>Criminal: $1,000/one year [18 U.S.C. §709] |
| 2. | Use of advertisements or representations falsely suggesting that an entity is a Federal Home Loan Bank or a stockholder in one. [18 U.S.C. §709] | Same as #1 |

| | | |
|---|---|---|
| 3. | Deceptive use of "Federal Savings and Loan Insurance Corporation" or other words falsely suggesting connection with the FSLIC. [12 U.S.C. §1725(g)] | Criminal: $1,000/one year [12 U.S.C. §1725(g)] |
| 4. | Use of advertisements or representations falsely suggesting that accounts are insured by the FSLIC or U.S. Government. [12 U.S.C. §1725(g)] | Same as #3 |
| 5. | Advertising prospective insurance of accounts without the approval of the FSLIC. [12 C.F.R. §562.10] | Administrative: Denial of FSLIC-insured status |

## Footnotes

1. The FHLBB was created by the Federal Home Loan Bank Act, 12 U.S.C. §1421 et seq.

2. In this respect, the Federal Home Loan Bank System parallels the functions of the Federal Reserve System.

3. The functions of the FSLIC are very much like those performed by the Federal Deposit Insurance Corporation.

4. Prohibited practices designated 4, 7, and 10-13 apply to all members of the Federal Home Loan Bank System, not all of which are necessarily savings and loan associations. See note 8 infra.

5. See 12 C.F.R. 550, 566.

6. In the event of termination, notice is provided to savers. Insurance protection may continue as long as two years. FSLIC, Questions and Answers Concerning Your Insured Savings 12 (1974).

7. See note 5 supra.

8. Members of the Federal Home Loan Bank System include federal savings and loan associations, state-chartered insured and uninsured institutions, and some savings banks.

9. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System.

10. The Fair Credit Reporting Act is discussed under Federal Reserve System.

11. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

12. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission. See also Federal Reserve System, n. 35.

XV. FEDERAL MARITIME COMMISSION (1961)

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## XV. FEDERAL MARITIME COMMISSION (1961)

The Federal Maritime Commission (FMC) is an independent regulatory agency which oversees ocean and Great Lakes transportation of cargo and passengers in the offshore commerce of the United States. 1/ Its functions include establishment of rates and the prohibition of various improper activities.

| Prohibited Practices | Remedies |
|---|---|
| **Water Carriers--Offshore** | |
| 1. Charging fares or rates which exceed those filed with the FMC. [46 U.S.C. §817(a),(b)(1)] | Administrative: Enforcement of a reasonable rate [46 U.S.C. §817(a)]; Award of reparations to injured parties [46 U.S.C. §821]<br><br>Civil: Civil penalty to $1,000 for each day violation continues [46 U.S.C. §§817(b)(6), 831(c)]; Enforcement of administrative orders [46 U.S.C. §828]<br><br>Private: Individuals may sue to enforce administrative orders [46 U.S.C. §§828, 829] |
| 2. Engaging in unfair practices concerning the form and substance of tickets and receipts, property handling, or baggage. [46 U.S.C. §817(a)] | Same as #1 |
| 3. Failure, by carriers, to establish financial responsibility for injury or death to passengers or other persons on voyages to or from the United States. [46 U.S.C. §817d] | Administrative: Denial of departure clearance by Department of the Treasury [46 U.S.C. §817d (e)]<br><br>Civil: Civil penalty to $5,000, plus $200 per passage sold [46 U.S.C. §817d(c)] |

| | |
|---|---|
| 4. Arrangement, advertisement, or provision of passage on vessels not certified as financially responsible to safeguard passengers against injury or death. [46 U.S.C. §817e(a)] 2/ | Administrative: Award of reparations to injured parties [46 U.S.C. §821]; Denial of departure clearance by Department of the Treasury [46 U.S.C. §817e(e)]<br><br>Civil: Civil penalty to $5,000, plus $200 per passage sold [46 U.S.C. §817e(e)]<br><br>Criminal: $5,000 [46 U.S.C. §831(b)] |
| 5. Failure to indemnify passengers against nonperformance. [46 U.S.C. §817e] | Same as #4 [46 U.S.C. §817e(c),(e)] |
| 6. Payment, allowance, or agreement to pay or allow a rebate to any shipper. [46 U.S.C. §812] | Administrative: After notice and hearing, the FMC may certify violations to the Commissioner of Customs who shall refuse right of entry for any ship owned, operated or controlled by the carrier [46 U.S.C. §813]<br><br>Criminal: $25,000 [46 U.S.C. §812]<br><br>Civil: Enforcement of administrative orders [46 U.S.C. §828] |
| 7. Giving an undue preference, advantage, or disadvantage to any particular person, locality, or type of traffic, or charging less than regular rates to any shipper of property. [46 U.S.C. §815] | Administrative: Award of reparations to injured parties [46 U.S.C. §821]<br><br>Criminal: $5,000 [46 U.S.C. §815]<br><br>Private: Individuals may sue to enforce administrative orders [46 U.S.C. §829] |

## Footnotes

1. See the Shipping Act, 1916, 46 U.S.C. §801 et seq. See also Interstate Commerce Commission, which regulates inland waterway and coastal shippinx.

2. See also 46 C.F.R. 540, which concerns security for the protection of the public.

XVI. FEDERAL RESERVE SYSTEM (1913)

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## XVI. FEDERAL RESERVE SYSTEM (1913)

The Federal Reserve System, the "central bank" of the United States, consists of the Board of Governors (FRB), the Federal Open Market Committee, 12 Federal Reserve Banks (and their 25 branches), and some 5,800 member banks. Various regulatory and supervisory functions are performed to maintain the banking industry in a sound condition. 1/ The Federal Reserve System transfers funds, handles U.S. Government deposits and securities, and acts as the lender of last resort.

The FRB is responsible for the enforcement of numerous consumer protection statutes as they relate to state-chartered member banks, including the Truth in Lending, Fair Credit Reporting, Equal Credit Opportunity, Fair Credit Billing, and Consumer Leasing Acts. 2/ With the exception of the Fair Credit Reporting Act, the FRB promulgates implementing regulations for these statutes, which are also enforced by a number of other agencies. 3/ The consumer-related functions of the FRB are assigned to its Division of Consumer Affairs. The named statutes are briefly described below.

- Truth in Lending Act (TILA). 4/ The TILA seeks to provide consumers with meaningful and timely information concerning credit costs. Written disclosure of credit terms in a clear and uniform manner for all "consumer credit transactions" 5/ allows consumers to readily compare various credit costs available from different sources and avoid the uninformed use of credit. 6/ In the case of loans or credit sales, creditors must disclose, among other things, the "annual percentage rate" and "finance charge," 7/ default charges, prepayment penalties, the nature of security interests taken, costs of credit insurance, and, where a security interest on real estate is involved (other than a first mortgage loan), the borrower's right to cancel within three business days. For "open end" credit, i.e., credit cards, revolving charge accounts, and overdraft checking, the TILA also requires that periodic statements, including required disclosures, be mailed to consumers. The TILA also regulates the advertising of credit terms. Regulations to implement the TILA are promulgated by the FRB. Sections A, Credit Disclosures, and F, Credit Card, Revolving Charge, and Overdraft Checking Accounts, which follow, apply to all agencies which enforce the TILA. 8/

- Fair Credit Reporting Act (FCRA). 9/ The FCRA regulates the activities of "credit reporting agencies," 10/ to insure that only accurate, relevant, and recent information concerning consumers is provided to those offering credit, insurance, and employment. Such agencies may not circulate false or obsolete information and must operate in a fair and equitable manner, only providing "consumer reports" for appropriate purposes and to proper parties. 11/ On

the other hand, some maintain that the FCRA does not provide sufficient protection to consumers to warrant this government-sanctioned invasion of personal privacy concerning financial and other matters. 12/ Unlike the other statutes described, the FCRA does not authorize the promulgation of regulations to implement its provisions. Section B, Credit Reports, which follows, applies to all agencies which enforce the FCRA. 13/

• Equal Credit Opportunity Act (ECOA). 14/ The ECOA was enacted to insure that credit is made available fairly, impartially, and without discrimination, to provide equal access to credit for all who possess an equal ability to pay. Originally limited to discrimination on the basis of sex or marital status, an amendment expanded the ECOA to include discrimination based on race, color, religion, national origin, age, the fact that a person derives income from a public assistance program, or the good faith exercise of rights under the Consumer Credit Protection Act. 15/ As with the TILA, the FRS promulgates regulations to implement the the ECOA. Section C, Access to Credit, which follows, applies to all agencies which enforce the ECOA. 16/

• Fair Credit Billing Act (FCBA). 17/ The FCBA, actually an amendment to the TILA, is intended to protect consumers against inaccurate and unfair billing practices by credit card companies and other open end creditors. It establishes procedures for the prompt resolution of billing disputes and the notification of consumers of their rights under the FCBA. The promulgation of regulations is the same as for the TILA. Section D, Credit Billing, which follows, applies to all agencies which enforce the FCBA. 18/

• Consumer Leasing Act (CLA). 19/ The CLA also amends the TILA, and requires disclosure of terms governing the leasing of personal property by consumers. Apartment rentals are excluded, 20/ leaving automobile leasing as the primary target of regulation. The CLA seeks to protect consumers from inadequate and misleading information and to facilitate the comparison of leasing costs with those associated with credit buying, a common alternative to leasing. 21/ The substantive requirements of the CLA parallel those of the TILA as it relates to credit extensions, i.e., timely written disclosure of prescribed terms in a uniform fashion and adherence to specified requirements regarding the advertising of leasing terms. The CLA also limits lessee liability on the expiration or termination of a "consumer lease." 22/ The promulgation of regulations is also the same as under the TILA. Section E, Consumer Leases, which follows, applies to all agencies which enforce the CLA. 23/

| Prohibited Practices | Remedies |
|---|---|
| **A. Credit Disclosures** | |
| 1. Failure to provide a written statement containing required disclosures prior to consummation of a credit sale or loan transaction, or to furnish a duplicate of the statement to the consumer at the time disclosures are made. [12 C.F.R. §226.8(a)] | Administrative: All powers usually exercised by the FRB [15 U.S.C. §1607(b)]<br><br>Criminal: $5,000/one year [15 U.S.C. §1611]<br><br>Private: Individuals may file civil lawsuits for actual damages and twice the amount of any finance charge, in no case less than $100 nor more than $1,000, plus costs and attorney's fees. Statutory damages in class actions may not exceed the lesser of $500,000 or 1% of the creditor's net worth. [15 U.S.C. §1640(a)] |
| 2. Failure to provide every required disclosure or to use the precise terminology prescribed. [12 C.F.R. §§226.6(a), 226.7-226.11] | Same as #1 |
| 3. Provision of required disclosures which are not clear, conspicuous, and in meaningful sequence. [12 C.F.R. §226.6(a)] | Same as #1 |
| 4. Provision of additional information in a manner which is confusing or misleading or which obscures required disclosures. [12 C.F.R. §226.6(c)] | Same as #1 |

| | |
|---|---|
| 5. Failure to specify the date on which the finance charge will begin to accrue. [12 C.F.R. §226.8(b)(1)] | Same as #1 |
| 6. Failure to specify the number, amounts, and due dates for all payments. [12 C.F.R. §226.8(b)(3)] | Same as #1 |
| 7. Providing for installment payments which exceed twice the regular payment amount, unless denoted as "balloon payments." [12 C.F.R. §226.8(b)(3)] | Same as #1 |
| 8. Failure to disclose any charge payable in the event of late payment. [12 C.F.R. §226.8(b)(4)] | Same as #1 |
| 9. Failure to adequately describe the type of any security interest taken, or to clearly identify the property to which a security interest relates. [12 C.F.R. §226.8(b)(5)] | Same as #1 |
| 10. Failure, in the case of most credit transactions in which a security interest will be retained in the consumer's residence, to notify the borrower of his right to cancel within three business days. [12 C.F.R. §226.9] | Administrative, Criminal, Private: See #1<br><br>Other: Buyer may cancel transaction up to three years later [15 U.S.C. §1635] |
| 11. Failure, in the case of open end credit transactions, to provide required disclosures when accounts are opened and in each periodic statement. 24/ [12 C.F.R. §226.7] | Same as #1 |

| | |
|---|---|
| 12. Advertising credit terms using terminology or calculation methods at variance with those prescribed by the TILA. [12 C.F.R. §226.10] | Administrative, Criminal: See #1 |

B. Credit Reports

| | |
|---|---|
| 1. Failure to provide the name and address of the consumer reporting agency which prepared a report used to deny credit, insurance, or employment, or to increase the cost of credit or insurance. [15 U.S.C. §1681m(a)] | Administrative: All powers usually exercised by the FRB [15 U.S.C. §1681s(c)]<br><br>Criminal: $5,000/one year [15 U.S.C. §§1681q, 1681r]<br><br>Private: Individuals may file civil lawsuits for actual damages and attorney's fees for negligent noncompliance; punitive damages may also be awarded for willful noncompliance [15 U.S.C. §§1681n, 1681o] |
| 2. Provision of a consumer report to any person or entity not possessing a legitimate business need for such information. [15 U.S.C. §1681b] | Same as #1 |
| 3. Failure to provide the "nature and substance of all information" on file concerning a person upon request, 25/ including the sources and recipients of reports for the preceding six months (two years for denials of employment). [15 U.S.C. §1681g] | Same as #1 |
| 4. Failure to provide such information without charge if the requester was denied credit, insurance, or employment within the preceding 30 days. 26/ [15 U.S.C. §1681j] | Same as #1 |

| | |
|---|---|
| 5. Failure to reinvestigate disputed information, 27/ or to promptly correct inaccurate data or delete unverifiable information and so notify recipients of such information. [15 U.S.C. §1681i(a),(d)] | Same as #1 |
| 6. In the event a dispute cannot be resolved by reinvestigation, failure to add the consumer's version of the facts in the file or to include that information in future reports. [15 U.S.C. §1681i(b),(c)] | Same as #1 |
| 7. Failure to remove obsolete 28/ information from files. [15 U.S.C. §1681c] | Same as #1 |
| 8. Failure to notify a consumer before preparation of an "investigative consumer report" 29/ on that individual, or to disclose the intended nature and scope of the investigation. [15 U.S.C. §1681d] | Same as #1 |

## C. Access to Credit

| | |
|---|---|
| 1. Discouragement of credit applications on any prohibited basis, i.e., race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, or good faith exercise of rights under the Consumer Credit Protection Act. [12 C.F.R. §202.4(a)] | Administrative: All powers usually exercised by the FRB [15 U.S.C. §1691c(b)]<br><br>Civil: U.S. Attorney General may sue for injunctive and other appropriate relief [15 U.S.C. §1691e(h)]<br><br>Private: Individuals may file civil lawsuits for actual and punitive damages and/or injunctions, plus costs and attorney's fees. Statutory damages in class actions may not exceed the lesser of $500,000 or 1% of the creditor's net worth. [15 U.S.C. §1691e] |

2. Denial or termination of credit on any such prohibited basis.
[15 U.S.C. §1691(a); 12 C.F.R. §202.4]

Same as #1

3. In any case where credit is denied:

Same as #1

a. Failure to notify the applicant of such action within 30 days of receipt of the completed application.
[15 U.S.C. §1691(d)(1); 12 C.F.R. §202.9(a)]

b. Failure to notify the applicant within 30 days of taking adverse action on an uncompleted application.
[15 U.S.C. §1691(d)(1); 12 C.F.R. §202.9(a)]

c. Failure to notify a customer within 30 days after taking adverse action on an existing account.
[15 U.S.C. §1691(d)(1); 12 C.F.R. §202.9(a)]

d. Failure to disclose the specific reasons for denial, or failure to properly disclose that such reasons will be given upon request.
[15 U.S.C. §1691(d)(2); 12 C.F.R. §202.9(a)(2), (b)(2)]

e. Failure to provide the applicant with a prescribed notice describing the ECOA's nondiscrimination requirement and naming the appropriate federal enforcement agency.
[12 C.F.R. §202.9(a)(2), (b)(1)]

4. Refusal to grant a separate account to a creditworthy applicant on any prohibited basis.
[12 C.F.R. §202.7(a)]

Same as #1

| | | |
|---|---|---|
| 5. | Requiring reapplication for, or changing the terms of, an existing account on any prohibited basis. [15 U.S.C. §1691(a); 12 C.F.R. §202.7(c)] | Same as #1 |
| 6. | Making inquiries as to an applicant's marital status, except where required by state law. [12 C.F.R. §202.5(d)] | Same as #1 |

## D. Credit Billing

| | | |
|---|---|---|
| 1. | Failure to provide a prescribed notice to each new customer describing his or her rights under the FCBA. [12 C.F.R. §226.7(a)(9)] | Administrative, Criminal, Private: See #A1 |
| 2. | Failure to acknowledge a timely notification of an alleged billing error within 30 days. [12 C.F.R. §226.14(a)(1)] | Administrative, Criminal, Private: See #A1<br><br>Other: Creditor forfeits the right to collect the amount indicated by the customer to be in error, whether or not in fact erroneous, to $50 per item or transaction [12 C.F.R. §226.14(f)] |
| 3. | Failure by a creditor to make appropriate corrections or provide a written explanation of its findings within two complete billing cycles. [12 C.F.R. §226.14(a)(2)] | — Same as #2 |
| 4. | Acceleration of a customer's entire indebtedness in retaliation for the exercise of rights under the FCBA. [12 C.F.R. §226.14(b)(1)] | Same as #2 |
| 5. | Closing any account because a customer refuses to pay the disputed amount during the FCBA resolution process. [12 C.F.R. §226.14(d)] | Same as #2 |

## E. Consumer Leases 30/

| | |
|---|---|
| 1. Failure to provide a written statement containing required disclosures prior to consummation of a consumer lease transaction, or to furnish a duplicate of the statement to the consumer at the time disclosures are made. [15 U.S.C. §1667a; 12 C.F.R. §226.15(a)] | Administrative, Criminal, Private: See #A1 |
| 2. Failure to provide every required disclosure or to use the precise terminology prescribed. [15 U.S.C. §1667a; 12 C.F.R. §226.15(b)] | Same as #A1 |
| 3. Failure to adhere to CLA provisions limiting the lessee's liability on the expiration or termination of the lease. [15 U.S.C. §1667b] | Same as #A1 |
| 4. Advertising consumer leasing using terminology or calculation methods at variance with those prescribed by the CLA. [15 U.S.C. §1667c; 12 C.F.R. §226.10(g),(h)] | Administrative, Criminal: See #A1<br><br>Private: See #A1 (which applies only if the lessee suffers actual damage as a result of the violation 31/ [15 U.S.C. §1667d(b)] |

## F. Credit Card, Revolving Charge, and Overdraft Checking Accounts 32/

| | |
|---|---|
| 1. Failure to provide periodic statements, which include every required disclosure, or to use the precise terminology prescribed. [12 C.F.R. §226.7(b)] | Administrative, Criminal, Private: See #A1 |

| | |
|---|---|
| 2. Failure to mail periodic statements to customers at least 14 days before the date by which payment must be made to avoid imposition of a finance charge, if any. [12 C.F.R. §226.7(b)(2)] | Same as #A1 |
| 3. Failure to promptly credit all payments received. [12 C.F.R. §226.7(g)] | Same as #A1 |
| 4. Issuance of unsolicited credit cards. [12 C.F.R. §226.13(a)] | Administrative, Criminal, Private: See #A1<br><br>Other: Unless the card is "accepted," 33/ the purported cardholder is not liable for any charges made [12 C.F.R. §226.13(b)] |
| 5. Holding customers responsible for unauthorized use of accepted credit cards, unless notice of potential liability and a postage-free loss notification form were provided. [12 C.F.R. §226.13(b)] | Administrative, Criminal, Private: See #A1<br><br>Other: The cardholder is not liable for any charges made with the credit card in the absence of the notice and loss form. If the notice and form were provided, such liability is limited to the lesser of $50 or the amount actually charged prior to notification of loss. [12 C.F.R. §226.13(b)] |

## G. Other Prohibited Practices

| | |
|---|---|
| 1. Engaging, by state banks which are members of the Federal Reserve System, in unfair or deceptive acts or practices affecting consumers. [15 U.S.C. §57a(f)] 34/ | Administrative: Cease and desist order; Termination of FDIC-insured status [15 U.S.C. §57a(f)(2)]; All powers usually exercised by the FRB [15 U.S.C. §57a(f)(3)] |

| | |
|---|---|
| 2. Violation of the Fair Debt Collection Practices Act by banks which are members of the Federal Reserve System other than national banks. 35/ [15 U.S.C. 1692 l(b)(1)(B)] | Administrative, Civil, Criminal: All authority conferred on the FRB by any law, except the promulgation of regulations [15 U.S.C. §1692 l(c)]<br><br>Private: See Federal Trade Commission, #I1 |
| 3. Extension of credit, lease or sale of property, or furnishing of a service by any bank 36/ subject to a requirement that the customer obtain any additional credit, property, or service from the bank or a related entity. [12 U.S.C. §1972(1),(2)] | Civil: Enjoin violations [12 U.S.C. §1973]<br><br>Private: Individuals may file civil lawsuits for three times the actual damages sustained, plus costs and attorney's fees, or for injunctions against threatened loss or damage [12 U.S.C. §§1975, 1976] |
| 4. Requiring a customer to provide any additional credit, property, or service other than those related to and usually provided in connection with the loan or service provided. [12 U.S.C. §1972(3),(4)] | Same as #3 |
| 5. Requiring that a customer not obtain some other credit, property, or service from a competitor. [12 U.S.C. §1972(5)] | Same as #3 |
| 6. Use of deceptive or misleading advertisements concerning interest paid on deposits by member banks, or failure to clearly and conspicuously disclose all required information in such advertisements. [12 C.F.R. §217.6] | |
| 7. Failure to disclose any penalty to be imposed in the event of early withdrawal. [12 C.F.R. §217.6(e)] | |

| | |
|---|---|
| 8. Certification of checks when the amount deposited is inadequate to cover payment. [12 U.S.C. §501; 18 U.S.C. §1004] | Administrative: If Federal Reserve Bank, suspension of operations [12 U.S.C. §248(h)]; Forfeiture of membership in Federal Reserve System [12 U.S.C. §327]<br><br>Criminal: $5,000/five years [18 U.S.C. §1004]<br><br>Other: Such checks are valid obligations against banks certifying them [12 U.S.C. §501] |
| 9. Falsely suggesting, by advertisement or other representation, that an entity is a member of the Federal Reserve System. [18 U.S.C. §709] | Civil: Enjoin violations [18 U.S.C. §709]<br><br>Criminal: $1,000/one year [18 U.S.C. §709] |

## Footnotes

1. The Federal Reserve System was established pursuant to the Federal Reserve Act, 12 U.S.C. §221 et seq.

2. See 15 U.S.C. §§1607(a)(1)(B) (TILA, FCBA, CLA); 1681s(b)(1)(B) (FCRA); 1691c(a)(1)(B) (ECOA).

3. Unless otherwise stated, each of the following agencies enforces the Truth in Lending (including Fair Credit Billing and Consumer Leasing), Fair Credit Reporting, and Equal Credit Opportunity Acts, as they relate to the indicated entitites: Department of Agriculture (packers and stockyards); Civil Aeronautics Board (air carriers); Office of the Comptroller of the Currency (national banks); Farm Credit Administration (Federal Land Banks, Land Bank Associations, Intermediate Credit Banks, and Productive Credit Associations) (no FCRA responsibility); Federal Deposit Insurance Corporation (banks insured by the FDIC that are not members of the FRS), Federal Home Loan Bank Board (banks and savings and loans associations subject to the laws it administers); Interstate Commerce Commission (common carriers) (no TILA responsibility); National Credit Union Administration (federal credit unions); Securities and Exchange Commission (securities brokers and dealers) (Only ECOA responsibility); Small Business Administration (small business investment companies) (only ECOA responsibility); and Federal Trade Commission (all other creditors).

4. 15 U.S.C. §1601 et seq.; 12 C.F.R. 226 (Regulation Z). See also FRB, What Truth in Lending Means to You; FTC Buyer's Guide No. 12, A Money Saving Offer! Truth-in-Lending Takes the Wraps Off Credit (1973).

5. The Truth in Lending Act does not apply to government credit, certain large transactions, business credit, or public utility bills. 12 C.F.R.§226.3.

6. This uniform disclosure law prevents many deceptive, unfair, or fraudulent credit practices. In addition, consumers, when reviewing mandated disclosures, have the opportunity to review other contract provisions commonly associated with fraud, e.g., "as is" waivers of warranty protections, since required disclosures are often accompanied by terms not covered by the TILA.

7. The terms "annual percentage rate" and "finance charge" were created by the TILA. Each establishes a single method of calculation and disclosure in place of the variety of methods which prevailed earlier. See 12 C.F.R. §§226.2(g),(w), 226.4, 226.5.

8. See note 3 supra.

9. 15 U.S.C. §1681 et seq. See also FTC Buyer's Guide No. 7, Fair Credit Reporting Act.

10. Credit reporting agencies are businesses that gather and sell information used to judge individuals' eligibility for credit, insurance, and employment. 15 U.S.C. §1681a(f).

11. 15 U.S.C. §1681.

12. One criticism is that the FCRA does not require that the consumer physically handle or receive a copy of the actual file--a summary of the "nature and substance" is all that is mandated. Another is that consumer reporting agencies often receive inaccurate information, which they are not required to verify. Some feel there is a tendency for credit files to contain only the negative aspects of one's credit history, since good accounts are often unreported.

13. See note 3 supra.

14. 15 U.S.C. §1691 et seq.; 12 C.F.R. 202 (Regulation B). See also FRB, The Equal Credit Opportunity Act and...Women (1977); FRB, The Equal Credit Opportunity Act...and Age (1977); FRB, The Equal Credit Opportunity Act and...Doctors, Lawyers, Small Retailers, and Others Who May Provide Incidental Credit (1977); FRB, The Equal Credit Opportunity Act and...Credit Rights in Housing (1978).

15. 15 U.S.C. §1691(a), as amended. The Consumer Credit Protection Act includes all credit statutes previously discussed as well as others, e.g., the Fair Credit Debt Collection Practices Act. See note 35 infra.

16. See note 3 supra.

17. See generally Federal Trade Commission, The Fair Credit Billing Act (1976).

18. See note 3 supra.

19. 15 U.S.C. §§1667-1667e; 12 C.F.R. §226.15. See also FRB/FTC, Truth in Leasing (1978); FTC, Truth in Leasing (1978).

20. 12 C.F.R. §226.3(f).

21. See 15 U.S.C. §1601(b).

22. "Consumer Lease" defined: 15 U.S.C. §1667(1); 12 C.F.R. §226.2(mm).

23. See note 3 supra.

24. For a definition of open end credit, see 12 C.F.R. §226.2(x). Other requirements relating to such transactions are set forth in F, Credit Card, Revolving Charge, and Overdraft Checking Accounts.

25. As stated in note 12, supra, the FCRA does not require that the consumer be permitted to inspect or receive a copy of the actual file. Medical information is exempted from the information which must be disclosed.

26. In other instances, a reasonable charge is permitted.

27. Disputed information is that which is alleged to be incorrect or incomplete. As observed in note 12, supra, consumer reporting agencies need not verify information in their files, except when requested to do so by a consumer.

28. "Obsolete" information is that which is seven years old (14 years in the case of bankruptcy information).

29. An "investigative consumer report" involves interviews with third parties concerning the character, reputation, or manner of living of the subject. 15 U.S.C. §1681a(e).

30. For additional prohibited practices, see the detailed requirements set forth in 15 U.S.C. §1667a and 12 C.F.R. §226.15(b).

31. Note that private actions for deceptive advertising are not permitted under the TILA, i.e., for credit advertisements.

32. See generally 12 C.F.R. §226.7. See also #A11; D, Credit Billing.

33. See 12 C.F.R. §226.2(a).

34. See 12 C.F.R. 227 (Regulation AA). The FRB has also proposed a regulation which would proscribe a number of unfair credit practices. See Federal Trade Commission, n. 44.

35. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission. The FRB has issued a fact sheet and set of questions and answers describing bank responsibilities under the Act. See 5 Trade Reg. Rep. (CCH) ¶¶11,501, 11,502.

36. "Bank" defined: 12 U.S.C. §§1841, 1971.

XVII. FEDERAL TRADE COMMISSION (1915)

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## XVII. FEDERAL TRADE COMMISSION (1915)

The Federal Trade Commission (FTC) is an independent law enforcement agency with a broad mandate to prevent unfair or deceptive trade practices and unfair methods of competition. 1/ Congress has delegated the federal government's major consumer protection responsibility to the FTC through its enforcement of the Federal Trade Commission Act and a number of special consumer protection statutes. 2/

The FTC Act 3/ generally prohibits unfair or deceptive practices affecting interstate commerce. The FTC implements this general mandate by defining specific prohibited practices in trade regulation rules, industry guides, and case decisions as well as administrative opinions and rulings. 4/ Trade regulation rules have the same force of law as the FTC Act itself; there are currently about two dozen, with several others being considered for promulgation. 5/ Industry guides interpret and clarify legal approaches to single-industry concerns or illegal processes, e.g., bait advertising or deceptive pricing, 6/ and are intended to guide industry into legal conformity. 7/ Not enforceable in themselves, failure to comply may result in corrective action under applicable statutory provisions. 8/

Among the specialized consumer protection statutes administered by the FTC are laws regulating product packaging and labeling and warranties, advertising, trademarks, unsolicited merchandise, credit practices, and so forth. Some concern special product areas, e.g., food, drugs, cosmetics, and medical devices; wool, fur, and textile products; and imitation political and numismatic items.

FTC operations are conducted largely by three bureaus. The Bureau of Consumer Protection enforces the laws described below. The Bureau of Competition administers various antitrust statutes dealing with unfair methods of competition. The Bureau of Economics publishes studies of the economy and assists the other two bureaus in their enforcement functions and conducts cost/benefit analyses of consumer programs.

### A. Unfair or Deceptive Acts and Practices

| | |
|---|---|
| 1. Engaging in unfair or deceptive acts or practices in or affecting interstate commerce. 9/ [15 U.S.C. §45(a)(1)] | Administrative: Cease and desist order [15 U.S.C. §45(b)]<br><br>Civil: Enjoin violations pending entry of a final cease and desist order, dismissal of the complaint by the FTC, or setting aside of the order by a reviewing court [15 U.S.C. §53(b)]; For violation of a cease and desist order, civil penalty to $10,000 per violation [15 U.S.C. §45(1),(m)]; 10/ For |

| | |
|---|---|
| | violation of a cease and desist order, such relief as the court finds necessary to redress consumers, e.g., rescission or reformation of contracts, refunds or returns of property, or payment of damages 11/ [15 U.S.C. §57b(b)] |

B. Consumer Products--Packaging and Labeling 12/

| | |
|---|---|
| 1. Unfair or deceptive labeling of consumer commodities. [15 U.S.C. §§1452(a), 1453] | Administrative: See #A1; If imported, denial of entry at customhouse, possible destruction--relabeling may be permitted if it will achieve compliance [15 U.S.C. §1456(c); 21 U.S.C. §381(a),(b)]<br><br>Civil: See #A1 |
| 2. Failure to affix labels which comply with prescribed requirements as to pricing, size, content, or quantity representations. 13/ [15 U.S.C. §§1452(a), 1453] | Same as #1 |
| 3. Engaging in deceptive packaging, including misrepresentation of retail sale price. 14/ [15 U.S.C. §1452(a); 16 C.F.R. 502] | Same as #1, plus:<br><br>Civil: For violation of a trade regulation rule with actual or implied knowledge, civil penalty to $10,000 per violation, at the suit of the FTC [15 U.S.C. §45(m)]; In the case of trade regulation rule violations, the FTC is also empowered to seek consumer redress without referral to the U.S. Attorney General [15 U.S.C. §57b(b)] |
| 4. Unfair or deceptive use of such representations as "cents off," "introductory offers," or "economy size." [16 C.F.R. §§502.100-502.102] | Same as #3 |
| 5. Failure to affix energy efficiency labels to designated consumer products, or removal or alteration of such labels. 15/ [42 U.S.C. §6302(a)] | Administrative, Civil, Private: See Department of Energy, #4 |

## C. Consumer Products--Warranties 16/

| | |
|---|---|
| 1. Making, by a warrantor, 17/ of any deceptive warranty 18/ with respect to a consumer product. 19/ [15 U.S.C. §2310(c)] | Administrative: See #A1 [15 U.S.C. §2310(b)]<br><br>Civil: See #A1 [15 U.S.C. §2310(b)]; Enjoin violations [15 U.S.C. §2310(c)(1)]<br><br>Private: Consumers 20/ may be obliged to utilize informal dispute settlement procedures 21/ prior to pursuing other legal remedies, the decisions of which, while not binding, are admissible as evidence in subsequent proceedings [15 U.S.C. §2310(a)(3)]; Individual and class actions may seek damages and other legal and equitable relief, plus costs and attorney's fees, in state or federal court (the latter requires that each individual claim be at least $25 and that the amount in controversy be at least $50,000), and class actions must include at least 100 named plaintiffs [15 U.S.C. §2310(d)] 22/ |
| 2. Failure, by a warrantor providing a written warranty, 23/ to fully and conspicuously disclose the terms and conditions of the warranty in simple and readily understood language. [15 U.S.C. §2302(a); 16 C.F.R. 701] | Administrative, Private: See #1<br><br>Civil: See #1, #B3 |
| 3. Failure, by a seller 24/ or warrantor, to make the terms of a written warranty available prior to sales of warranted products, or to do so clearly and conspicuously in a manner which does not mislead. 25/ [15 U.S.C. §2302(b); 16 C.F.R. 702] | Same as #2 |

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|---|---|
| 4. Failure to clearly and conspicuously designate a written warranty as a "full warranty" or "limited warranty" along with its duration, 26/ or designation as "full" if it fails to meet minimum federal warranty requirements. [15 U.S.C. §2303(a)] | Same as #1 |
| 5. In the case of a written warranty designated as a "full warranty": 27/ | Same as #1 |
| a. Failure to remedy defects within a reasonable time and without charge, or to comply with warranty terms. | |
| b. Imposition of any limitation on the duration of any implied warranty on the product. | |
| c. Exclusion or limitation of consequential damages for breach of the written or implied warranty, 28/ unless disclosed conspicuously on the face of the warranty. | |
| d. Failure, following a reasonable number of attempts by the warrantor to remedy defects, to permit the consumer to choose a refund or replacement without charge. | |
| e. Imposition of unreasonable duties as a condition to securing the remedy of product defects. | |
| [15 U.S.C. §2304] | |
| 6. Disclaimer or modification, by a supplier, 29/ of an implied warranty in any written warranty, or in a service contract 30/ entered into within 90 days after the sale. [15 U.S.C. §2308(a)] | Administrative, Civil, Private: See #1<br>Other: Such disclaimers and modifications are ineffective [15 U.S.C. §2308(c)] |

| | |
|---|---|
| 7. Limitation of the duration of an implied warranty, except where conscionable, clearly and prominently disclosed on the face of the warranty, and limited to the duration of a written warranty of reasonable duration. 31/ [15 U.S.C. §2308(b)] | Administrative, Civil, Private: See #1<br><br>Other: Such limitations are ineffective [15 U.S.C. §2308(c)] |
| 8. Conditioning, by a warrantor, of any written or implied warranty on the purchase and use of any specific brand of product or service, except where specifically permitted. [15 U.S.C. 2302 (c)] | Same as #1 |

D. Foods, Drugs, Cosmetics, and Medical Devices 32/

| | |
|---|---|
| 1. Dissemination of any false advertisement 33/ likely to induce the purchase of foods, drugs, cosmetics, or medical devices. 34/ [15 U.S.C. §52(a)] | Administrative: See #A1 [15 U.S.C. §52(a)]<br><br>Civil: See #A1 [15 U.S.C. §52(a)]; Enjoin violations pending entry of a final cease and desist order, dismissal of the complaint by the FTC, or setting aside of the order by a reviewing court [15 U.S.C. §53(a)]<br><br>Criminal: For violations which may be injurious to health or which are done with intent to mislead: First offense--$5,000/six months; Subsequent offenses--$10,000/one year [15 U.S.C. §54(a)] |
| 2. Failure, by food stores, to stock advertised food and other products and make them conspicuously and readily available for sale during the effective period of an advertisement, at or below the advertised prices, throughout the area served by any stores covered by the advertisement. 35/ [16 C.F.R. §424.1(b)] | Administrative: See #A1<br><br>Civil: See #A1, B3 |

## E. Wool, Fur, and Textile Products 36/

| | |
|---|---|
| 1. Use of false or deceptive advertisements (fur and textile fiber products) or labeling (wool, fur, and textile fiber products). [15 U.S.C. §§68a, 68b(a), 68f; 15 U.S.C. §§69a, 69b(1), 69d; 15 U.S.C. §§70a, 70b(a), 70g] | Administrative: Cease and desist order [15 U.S.C. §§45(b), 68d, 69f(a), 70e]; If imported, prohibition of further importation unless a bond is filed with the Department of the Treasury in an amount equal to twice the value of the products and duties, conditioned upon compliance [15 U.S.C. §§68f, 69d, 70g]<br><br>Civil: Enjoin violations pending entry of a final cease and desist order, dismissal of the complaint by the FTC, or setting aside of the order by a reviewing court [15 U.S.C. §§68e(b), 69g(b), 70f]; Seizure and condemnation of wool or fur products [15 U.S.C. §§68e(a), 69g(a)]; For violation of cease and desist orders, see #A1 [15 U.S.C. §§68d, 69f(a), 70e]<br><br>Criminal: $5,000/one year [15 U.S.C. §§68h, 69i, 70i] |
| 2. Failure to affix labels showing required information plainly and legibly. 37/ [15 U.S.C. §§68a, 68b(a), 68c, 68f; 15 U.S.C. §§69a, 69b(2), 69d; 15 U.S.C. §§70a, 70b(b), 70g] | Same as #1 |
| 3. Removal or mutilation of required labels prior to sale. [15 U.S.C. §§68c, 68f; 15 U.S.C. §§69a(d), 69d; 15 U.S.C. §§70c(a), 70g] | Same as #1 |
| 4. Failure to permanently affix care labels or tags to wearing apparel or textile products made for immediate conversion to such use. 38/ [16 C.F.R. §423.1(a)] | Same as #D2 |

## F. Door-to-Door Sales 39/

| | |
|---|---|
| 1. Failure by sellers offering consumer products with written warranties in door-to-door sales 40/ to disclose, prior to consummation, orally and in any written materials shown, that copies of the warranty are available for inspection during the sales presentation. [16 C.F.R. §702.3(d)] | Same as #C2 |
| 2. Failure to orally inform buyers of their right to cancel within three business days, or misrepresentation of that right in any manner. [16 C.F.R. §429.1(e),(f)] | Same as #D2 |
| 3. Failure to furnish a completed receipt or copy of the contract when executed, in the same language used in the oral sales presentation, or to include the date, seller's name and address, and a prescribed statement describing the buyer's right to cancel. [16 C.F.R. §429.1(a)] | Same as #2 |
| 4. Inclusion in contracts or receipts of any confession of judgment or provision intended to waive any of the rights here described. [16 C.F.R. §429.1(d)] | Same as #2 |
| 5. Failure to furnish a "notice of cancellation" form, in duplicate, containing prescribed language effecting the right to cancel, or to complete both copies of the notice before providing them to the buyer. [16 C.F.R. §429.1(b),(c)] | Same as #2 |

| | |
|---|---|
| 6. Negotiation, transfer, sale, assignment of notes or other evidence of indebtedness less than five business days following the transaction. [16 C.F.R. §429.1(h)] | Same as #2 |
| 7. In the event of cancellation, failure, within ten business days, to refund all payments, return goods or property traded in, cancel and return negotiable instruments, or communicate whether the seller will repossess or abandon shipped or delivered goods. [16 C.F.R. §429.1(g),(i)] | Same as #2 |

## G. Mail Order Sales 41/

| | |
|---|---|
| 1. Mailing unordered merchandise or bills or dunning communications for such merchandise. 42/ [39 U.S.C. §3009] | Administrative, Civil: See #A1 [39 U.S.C. §3009(a)]<br><br>Other: Recipients may treat unordered items as gifts, and use or dispose of them without obligation [39 U.S.C. §3009(b)] |
| 2. Use of a negative option plan, unless clear and conspicuous disclosure of its material terms is provided as well as a timely notice of the goods' impending arrival and a form permitting timely refusal, or refusal to give full credit for properly returned selections. [16 C.F.R. §425.1] | Same as #D2 |
| 3. Failure, by sellers offering consumer products with written warranties for sale by catalog or mail order solicitation, to clearly and conspicuously disclose the full text of the warranty in the catalog or solicitation or state that it is obtainable without cost upon written request. [16 C.F.R. §702.3(c)] | Same as #C2 |

| | |
|---|---|
| 4. Solicitation of mail order sales, unless the seller reasonably expects to ship ordered merchandise within the time stated or within 30 days after receipt of an order. 43/ [16 C.F.R. §435.1(a)] | Same as #2 |
| 5. In the event mail order merchandise is not timely shipped, failure to offer an option to consent to a shipping delay or to cancel the order and receive a prompt refund, to provide a free means of reply, or to honor a cancellation and make a prompt refund to the buyer. [16 C.F.R. §435.1(b),(c)] | Same as #2 |

## H. Credit and Leasing Transactions 44/

| | |
|---|---|
| 1. Violation of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts by any entity or person not subject to the jurisdiction of another federal agency. 45/ [15 U.S.C. §1607(c)] | Administrative, Civil: See #A1 [15 U.S.C. §1607(b)]<br>Criminal, Private: See Federal Reserve System, #A1 |
| 2. Violation of the Fair Credit Reporting Act by such persons or entities. 46/ [15 U.S.C. §1681s(a)] | Administrative, Civil: See #A1 [15 U.S.C. §1681s(c)]<br>Criminal, Private: See Federal Reserve System, #B1 |
| 3. Violation of the Equal Credit Opportunity Act by such persons or entities. 47/ [15 U.S.C. §1691c(c) | Administrative, Civil: See #A1 [15 U.S.C. §1691c(b)]<br>Civil, Private: See Federal Reserve System, #C1 |
| 4. Taking or receiving a consumer credit contract 48/ which does not contain a prescribed notice preserving the buyer's right to assert claims and defenses against the seller as against third parties subsequently acquiring the contract, up to the amounts paid by the buyer. 49/ [16 C.F.R. §433.2(a)] | Same as #D2 |

| | |
|---|---|
| 5. Acceptance in such a sale or lease transaction of the proceeds of a purchase money loan, 50/ unless any related consumer credit contract contains the above-described notice. [16 C.F.R. §433.2(b)] | Same as #4 |

## I. Debt Collection Practices 51/

| | |
|---|---|
| 1. Engaging, by a debt collector, 52/ in the harassment, oppression, or abuse of any person in connection with the collection of a debt. 53/ [15 U.S.C. §1692d] | Administrative, Civil: See #A1, B3, including the treatment of such violations as if they are violations of trade regulation rules 54/ [15 U.S.C. §1692 1(a)]<br><br>Private: Individuals may file civil lawsuits for actual damages and such additional damages as the court may allow, not to exceed $1,000, plus costs and attorney's fees. In class actions, each named plaintiff may recover the same damages as individuals; the class is to be awarded such amount as the court may allow, not to exceed the lesser of $500,000 or 1% of the violator's net worth. If actions are brought in bad faith or to harass, attorney's fees may be awarded to defendants. 55/ [15 U.S.C. §1692k(a)] |
| 2. Use, by a debt collector, of any false, deceptive, or misleading representation or means in connection with the collection of a debt. 56/ [15 U.S.C. §1692e] | Same as #1 |
| 3. Use, by a debt collector, of any unfair or unconscionable means to collect or attempt to collect a debt. 57/ [15 U.S.C. §1692f] | Same as #1 |

| | |
|---|---|
| 4. Communication with third parties, 58/ by debt collectors, for any purpose other than locating debtors or as reasonably necessary to effectuate postjudgment judicial remedies. [15 U.S.C. §§1692b, 1692c(b)] | Same as #1 |
| 5. In seeking to obtain debtor location information 59/ from third parties, debt collectors must:<br>a. Disclose their identities, but refrain from identifying their employers, unless requested.<br>b. Not mention the existence of a debt.<br>c. Not communicate with the same person on more than one occasion, with limited exceptions.<br>d. Not use post cards, other mailed communications, or telegrams which indicate the existence of a debt or that a debt collector is involved. [15 U.S.C. §1692b(1)-(5)] | |
| 6. Communication, by a debt collector, with a consumer represented by an attorney, unless the latter fails to respond within a reasonable time. [15 U.S.C. §§1692b(6), 1692c(a)(2)] | Same as #1 |
| 7. Communication with a consumer 60/ at unusual or inconvenient times 61/ or places or at the consumer's place of work if the debt collector has reason to know the employer disapproves of such contacts. [15 U.S.C. §1692c(a)(1), (3)] | Same as #1 |
| 8. Failure, by a debt collector, within five days after contacting a consumer, to provide a written notice stating the amount owed, the name of the creditor, and what to do if the debt is disputed. [15 U.S.C. §1692g(a)] | Same as #1 |

| | |
|---|---|
| 9. Continuation of contact with a consumer by a debt collector if the former sends a letter within 30 days of the first contact stating the money is not owed, unless and until proof of the debt is provided to the consumer. [15 U.S.C. §1692g(b)] | Same as #1 |
| 10. Continuation of contact with a consumer by a debt collector if the consumer has stated in writing that he will not pay the debt or requesting the cessation of further contacts, except to inform the consumer that further efforts are being terminated or that specific action may be taken. 62/ [15 U.S.C. §1692c(c)] | Same as #1 |
| 11. In the case of multiple debts, failure to apply payments made in accordance with the consumer's instructions or applying them to debts which are disputed. [15 U.S.C. §1692h] | Same as #1 |
| 12. Institution of legal actions, by debt collectors, in inappropriate judicial districts. 63/ [15 U.S.C. §1692i(a)] | Same as #1 |
| 13. Designing, compiling, or furnishing, by any person, of any form to be used to falsely suggest that any person other than the creditor is participating in the collection of a debt. [15 U.S.C. §1692j(a)] | Same as #1 |

J. Other Prohibited Practices

| | |
|---|---|
| 1. Failure to make any required "clear and conspicuous" disclosure of information in the same language as that principally used in related advertisements or sales materials. [16 C.F.R. §14.9(a)] | Administrative, Civil: [16 C.F.R. §14.9(b)] See #A1 |

| | |
|---|---|
| 2. Use of trademarks to misrepresent the source of goods or services. 64/ [15 U.S.C. §1064] | Administrative: Revocation of trademark registration by the Department of Commerce [15 U.S.C. §1064]<br><br>Private: In any civil action involving a registered mark, the court may order the cancellation of the registration [15 U.S.C. §1119] |
| 3. Use of deceptive advertisements concerning, or labeling of, previously used lubricating oil. 65/ [42 U.S.C. §§6363(d)(1), 6394; 16 C.F.R. 406] | Administrative: See #A1 [42 U.S.C. §6363(f)]<br><br>Civil: See #A1, B3 [42 U.S.C. §6363(f)]; U.S. Attorney General may enjoin violations [42 U.S.C. §6395(d)]; Civil penalty to $5,000 per violation [42 U.S.C. §6395(a)]<br><br>Criminal: $10,000 [42 U.S.C. §6395(b)]; Offer, sale, or distribution after imposition of civil penalties: $50,000/six months [42 U.S.C. §6395(c)] |
| 4. Failure to disclose the minimum octane number of gasoline clearly and conspicuously on the pump from which it is dispensed. [16 C.F.R. §422.1] | Same as #D2 |
| 5. Manufacture or importation of any imitation political item 66/ not plainly and permanently marked to show its year of manufacture, or of any imitation numismatic item 67/ not plainly and permanently marked "copy." [15 U.S.C. §2101; 16 C.F.R. §§304.5, 304.6] | Administrative, Civil: See #A1 [15 U.S.C. §2103]; If imported, seizure and forfeiture under the customs laws [15 U.S.C. §2104]<br><br>Private: Any interested person may file a civil lawsuit to enjoin violations and for damages, plus costs and attorney's fees [15 U.S.C. §2102] |

## Footnotes

1. As to the establishment of the FTC, see 15 U.S.C. §41.

2. See generally FTC, Your FTC. What It Is and What It Does (rev. 1977). Publications relating to virtually every area of FTC regulation, often available without charge, are listed in FTC, List of Publications (1977).

3. 15 U.S.C. §§41-58.

4. The latter are set forth in 16 C.F.R. 15.

5. Present trade regulation rules (TRR) are contained in 16 C.F.R. 400-435. Some are included in the listed prohibited practices; those which are not concern very specific areas, e.g., sewing machines, 16 C.F.R. 401; binoculars, 16 C.F.R. 402; tablecloths, 16 C.F.R. 404; light bulbs, 16 C.F.R. 409; radio transistor counts, 16 C.F.R. 414; food retailing and gasoline industry games of chance, 16 C.F.R. 419; and power output of home entertainment products, 16 C.F.R. 432. Violation of any TRR is subject to the remedies noted in #D2. Pending TRRs, or which there are more than a dozen, concern such diverse matters as vocational and home study schools, 40 Fed. Reg. 21,048 (1975) (to be codified in 16 C.F.R. 438); credit practices (see note 44 infra); health spas, 40 Fed. Reg. 34,615 (1975) (to be codified in 16 C.F.R. 443); mobile homes, 40 Fed. Reg. 23,334 (1975) (to be codified in 16 C.F.R. 441); used car sales, 41 Fed. Reg. 1,089, 2,100 (1976) (to be codified in 16 C.F.R. 445); funeral industry, 40 Fed. Reg. 39,901, 42,212, 42,371 (1975) (to be codified in 16 C.F.R. 453); and protein supplements, 40 Fed. Reg. 41,144 (1975) (to be codified in 16 C.F.R. 454).

6. 16 C.F.R. 238, 251.

7. These guides, of which there were some 125 as of January 1, 1977 (including trade practice rules, which do not pertain to consumer protection issues), were codified in 16 C.F.R. 18-259. Many, however, have since been rescinded. Primarily organized by industry, illustrative guides are (or were): Residential Aluminum Siding Industry, 16 C.F.R. 57; Subscription and Mail Order Book Publishing Industry, 16 C.F.R. 150; Grocery Industry, 16 C.F.R. 209; Portrait Photographic Industry, 16 C.F.R. 215; Guides to the Household Furniture Industry, 16 C.F.R. 250. As also noted in the text, a few concern illegal practices of a generic nature, e.g., bait advertising.

8. 16 C.F.R. §17.1(a).

9. Since nearly all sales practices affect commerce, the FTC possesses jurisdiction over almost all forms of consumer deception. However, the FTC Act specifically excepts banks, common carriers, air carriers, and packers, which are regulated by other agencies. 15 U.S.C. §45(a)(2).

10. Such civil actions may be instituted by the FTC for knowing violations of cease and desist orders which followed administrative proceedings. 15 U.S.C. §45(m) Otherwise, they must be filed by the U.S. Attorney General. 15 U.S.C. §45(l).

11. Such actions are commenced by the FTC. To be actionable under this subsection, violations must be such that a "reasonable man" would have known they were dishonest or fraudulent under the circumstances. 15 U.S.C. §57b(a) Damages awarded may not be exemplary or punitive in nature. 15 U.S.C. §57b(b).

12. With the exception of #B5, these prohibitions and remedies arise under the Fair Packaging and Labeling Act, 15 U.S.C. §1451 et seq., which covers most consumer products, except alcoholic beverages, meat and poultry products, tobacco, and seeds, which are regulated by other agencies. 15 U.S.C. §1459(a); 16 C.F.R. §500.2(c). For other exclusions, see 16 C.F.R. §§503.2, .5. Under the Act's provisions, the packaging and labeling of foods, drugs, cosmetics, and medical devices is regulated by the Food and Drug Administration. 15 U.S.C. §§1454(a), 1456(a). The Department of Commerce is authorized to develop general packaging and labeling standards. 15 U.S.C. §1454(d), (e); 15 C.F.R. 12. See Department of Commerce, #A1. Imported products are the responsibility of the Department of the Treasury. 15 U.S.C. §1456(c).

    Other statutes also confer packaging and labeling functions on various agencies, generally in the context of product safety, e.g., Consumer Product Safety Commission and Department of Transportation.

13. For a description of requirements relating to the form and content of labels, see 15 U.S.C. §1453; 16 C.F.R. 500.

14. As of January 1, 1977, space was reserved in 16 C.F.R. 502 for the future addition of provisions governing package size characterization, common name and ingredient listing, and nonfunctional slack filling.

15. For a more complete description of federal energy efficiency requirements relating to consumer products, see Department of Energy.

16. Provisions governing written consumer product warranties are found in the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 et seq., which applies to covered products manufactured on or after July 4, 1975, except where the effective date is deferred pending the promulgation of regulations by the FTC. It should be observed that the applicability of various cited provisions depends upon the cost of the product in question, which is no small cause of confusion since the various minimums often differ, particularly between parallel statutory provisions and regulations.

    For a more thorough understanding of the Magnuson-Moss Act, reference should also be made to the FTC's Implementation and Enforcement Policy, 40 Fed. Reg. 25,721 (1975), 4 Trade Reg. Rep. (CCH) ¶40,011; Interpretations of the Magnuson-Moss Warranty Act, 16 C.F.R. 700, 42 Fed. Reg. 36,112, 38,341 (1977), 4 Trade Reg. Rep. (CCH) ¶40,016. See also FTC, Warranties: There Ought to be a Law...

17. "Warrantor" defined: 15 U.S.C. §2301(5); 16 C.F.R. §§701.1(g), 702.1(d), 703.1(d).

18. "Deceptive warranty" defined: 15 U.S.C. §2310(c)(2).

19. "Consumer product" defined: 15 U.S.C. §2301(1); 16 C.F.R. §§701.1(b), 702.1(b), 703.1(b).

20. "Consumer" defined: 15 U.S.C. §2301(3); 16 C.F.R. §§701.1(h), 703.1(g). Particularly significant is the inclusion of third parties as consumers under the Magnuson-Moss Warranty Act.

21. See 15 U.S.C. §2310; 16 C.F.R. 703.

22. Such private actions must be preceded by resort to the informal dispute settlement procedure or a reasonable opportunity to cure, as appropriate. 15 U.S.C. §2310(e).

23. "Written warranty" defined: 15 U.S.C. §2301(6); 16 C.F.R. §§701.1(c), 702.1(c), 703.1(c).

24. "Seller" defined: 16 C.F.R. §702.1(e).

25. For similar requirements relating to door-to-door and mail order sales, see #F1 and #G3, respectively.

26. The same warranty may be "full" in one state but "limited" in another, depending on state law concerning implied warranties, privity, and so forth. To add to the confusion, a warrantor is permitted to give "full" and "limited" warranties on the same product. 15 U.S.C. §2305.

27. For a discussion of reasonable duties under "full" warranties, see 16 C.F.R. 705, 42 Fed. Reg. 39,223 (1977), 4 Trade Reg. Rep. (CCH) ¶40,017.

28. "Implied warranty" defined: 15 U.S.C. §2301(7); 16 C.F.R. §701.1(d)

29. "Supplier" defined: 15 U.S.C. §2301(4); 16 C.F.R. §§701.1(f), 702.1(f).

30. "Service contract" defined: 15 U.S.C. §2301(8).

31. This provision does not limit the prohibition described in #C5b.

32. See also Department of Agriculture; Department of Commerce; Food and Drug Administration.

33. "False advertisement" defined: 15 U.S.C. §55(a).

34. "Food," "drug," "device," and "cosmetic" defined: 15 U.S.C. §55(b)-(e).

35. Merchants may disclose, if done clearly and conspicuously, any exceptions, limitations, or restrictions with respect to stores, products, or prices otherwise represented in advertisements. 16 C.F.R. §424.1(b)(2). See generally FTC Buyer's Guide No. 11, "Sold Out" Supermarket Specials.

36. See generally the Wool Products Labeling Act of 1939, 15 U.S.C. §68 et seq.; Fur Products Labeling Act, 15 U.S.C. §69 et seq.; and Textile Fiber Products Identification Act, 15 U.S.C. §70 et seq. Rules and regulations implementing these acts are codified in 16 C.F.R. 300, 301, and 303, respectively. See generally FTC Buyer's Guide No. 6, Look for That Label.

37. E.g., fur labels must identify the type of fur, prior use, whether artificially colored, quality, country of origin, and manufacturer. 15 U.S.C. §69b(2) For a discussion of label requirements relating to wool and textile fiber products, see 15 U.S.C. §§68b(a), 70b(b).

38. See generally FTC Buyer's Guide No. 10, Care Labels Can Save You Money and Trouble.

39. Except as regards #F1, "door-to-door sales," as defined in 16 C.F.R. §429.1, n. 1(a), do not include certain transactions, most notably those involving a purchase price of less than $25.00. See generally FTC Buyer's Guide No. 15, Three Days to Cancel. Door-to-Door Sales. Three Day Cooling Off Period (1974).

40. "Door-to-door sales" defined, for #F1 only: 16 C.F.R. §702.3(d)(1)(i).

41. The FTC and United States Postal Service share jurisdiction over mail order transactions; the latter primarily enforces laws prohibiting postal fraud and misrepresentation. See generally FTC/USPS, Shopping By Mail? You're Protected.

42. This law is enforced cooperatively by the FTC and the USPS. For a general discussion, see FTC Buyer's Guide No. 2, Unordered Merchandise (1972).

43. The prohibitions of #G3-5 do not apply to magazine subscription sales (after the initial shipment), seeds and growing plants, C.O.D. orders, negative option plans (but see #G2), or services, e.g., photo processing. 16 C.F.R. §435.1, nn. 1-4.

44. At the time this publication was prepared, the FTC was considering promulgation of a trade regulation rule on credit practices, which would limit the inclusion of unfair provisions in written contracts. See 40 Fed. Reg. 16,347 (1975) (to be codified in 16 C.F.R. 444), 4 Trade Reg. Rep. (CCH) ¶38,034. As proposed, the rule would prohibit or limit the use of: 1) waivers of the debtor's right to defend in the event of suit, or such other rights as statutory property exemptions; 2) wage assignments; 3) blanket security interests; 4) agreements to pay creditors' attorneys' fees and other collection costs; or 5) charging of excessive late fees. Co-signers would be provided with a description of the nature of the obligation to be assumed. Other provisions would limit contact with third parties in the course of debt collection and the sale of repossessed goods at prices substantially below their fair market value. A similar regulation has been proposed by the Federal Reserve Board. 40 Fed. Reg. 19,494 (1975).

45. For a description of these acts, see Federal Reserve System. As regards jurisdiction of the various agencies, see Federal Reserve System, n. 2.

46. Id. See also FTC, Compliance With the Fair Credit Reporting Act (2d ed., rev. 1977).

47. See note 45 supra.

48. "Consumer credit contract" defined: 16 C.F.R. §433.1(i).

49. See also FTC, Staff Guidelines on Trade Regulation Rule Concerning Preservation of Consumers' Claims and Defenses, 41 Fed. Reg. 20,022 (1976).

50. "Purchase money loan" defined: 16 C.F.R. §433.1(d). See also FTC, Statement of Enforcement Policy in Regard to Trade Regulation Rule on Preservation of Consumers' Claims and Defenses, 41 Fed. Reg. 34,594 (1976).

51. The described prohibited practices and remedies derive from the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq., which is Title VIII of the Consumer Credit Protection Act, as added by Act of September 20, 1977, Pub. L. No. 95,109, effective March 20, 1978. The Act's provisions are summarized in Cons. Cred. Guide (CCH) ¶690. See also FTC, Fair Debt Collection Practices Act (1978). Some time earlier, the FTC issued guidelines against debt collection deception, which are codified in 16 C.F.R. 237.

    Although general enforcement responsibility is conferred on the FTC, a share of enforcement is also committed to the following: Department of Agriculture (packers and stockyards); Civil Aeronautics Board (air carriers); Comptroller of the Currency (national banks); Federal Deposit Insurance Corporation (banks insured by the FDIC that are not members of the Federal Reserve System); Federal Home Loan Bank Board (institutions otherwise subject to FHLBB jurisdiction); Federal Reserve System (members of the FRS other than national banks); Interstate Commerce Commission (common carriers); and National Credit Union Administration (federal credit unions). 15 U.S.C. §1692 l. The Federal Reserve Board has issued a fact sheet and questions and answers to guide bank compliance with the Act. 5 Trade Reg. Rep. (CCH) ¶¶11,501, 11,502.

52. Generally, a "debt collector" is any party, other than the creditor or his attorney, who regularly collects debts for others. 15 U.S.C. §1692a(6).

53. While not limiting the intended general applicability of this prohibition, certain practices are specified as violative, e.g., threatening harm to one's person, property, or reputation; use of obscene language; publication of lists of consumers refusing to pay debts (except to credit reporting agencies); advertising of debts; making repeated telephone calls, or telephoning without identifying the caller. 15 U.S.C. §1692d.

54. Neither the FTC nor any other enforcing agency (see note 51 supra) may promulgate trade regulation rules or other regulations to implement the Fair Debt Collection Practices Act. 15 U.S.C. §1692 l(d).

55. Defenses likely to be raised in such private actions are suggested by 15 U.S.C. §1692k(b).

56. This section also lists numerous acts which violate its general proscription, e.g., use of false names; falsely implying the debt collector represents the government or is an attorney; representing that papers sent are legal forms when such is not the case or vice versa; sending papers which simulate official documents; falsely implying that the consumer has committed a crime or that nonpayment may result in arrest or imprisonment; implying that seizure, garnishment, attachment, or sale of property or wages will occur, unless such is the creditor's true intention and is legal; misrepresenting the amount of the debt; representing that false credit information will be given out; or representing that sale, referral, or transfer of the debt will result in the loss of any claims or defenses otherwise available to the consumer. 15 U.S.C. §1692e.

57. Among the examples of unfair or unconscionable conduct specified are: Collection of amounts which exceed the debt and what the law allows; making consumers accept collect telephone calls or pay for telegrams; taking or threatening to take property illegally; or putting anything on envelopes which indicates or suggests the communication concerns a debt. 15 U.S.C. §1692f.

58. Excluded from this prohibition are the consumer's attorney, creditor, creditor's attorney, debt collector's attorney, and consumer reporting agencies (if properly contacted). 15 U.S.C. §1692c(b). A limitation on third party contact is also included in the pending unfair credit practices regulation. See note 44 supra.

59. "Location information" defined: 15 U.S.C. §1692a(7).

60. "Consumer" defined: 15 U.S.C. §1692c(d) (for that section only).

61. Such contacts must generally be made between the hours of 8:00 a.m. and 9:00 p.m. 15 U.S.C. §1692c(a)(1).

62. The latter applies only if the debt collector or creditor usually takes the sort of action described.

63. Legal actions to enforce interests in real property securing a consumer obligation may be brought only in the judicial district (or similar legal entity) where the realty is located; otherwise, debt collection suits must be filed where the contract was executed or where the consumer resides at the time the action is commenced. 15 U.S.C. §1692i(a).

64. For a description of other prohibitions relating to trademarks, see Department of Commerce, C.

65. The statute which instructs the FTC to establish labeling standards for containers of recycled oil seeks to promote the use of recycled oil as an energy conservation measure and to reduce the environmental hazards associated with the disposal of used oil. 42 U.S.C. §6363(a) The Department of Commerce is to determine test procedures for re-refining or processing used oil; the Environmental Protection Agency is to prescribe standards applicable to containers of new, used, and recycled oil pertaining to their disposal after use. 42 U.S.C. §6363(c), (d).

66. "Imitation political item" defined: 15 U.S.C. §2106(2); 16 C.F.R. §304.1(e).

67. "Imitation numismatic item" defined: 15 U.S.C. §2106(4); 16 C.F.R. §304.1(d).

XVIII. FOOD & DRUG ADMINISTRATION (1931)

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## XVIII. FOOD AND DRUG ADMINISTRATION (1931)

The Food and Drug Administration (FDA) is one of six operating agencies within the Public Health Service, a major component of the Department of Health, Education, and Welfare. 1/ It administers various statutes dealing with the heavily regulated areas of foods and drugs as well as biological products, cosmetics, medical devices, and electronic products capable of emitting radiation (such as color television sets and microwave ovens). Nonetheless, limitations on the authority of the FDA exist within these areas. 2/ The FDA also licenses and regulates clinical laboratories. The principal headquarters activities of the FDA are conducted by six bureaus. 3/ The agency also has a large field organization.

The Food, Drug, and Cosmetic Act 4/requires that foods, drugs, medical devices, and cosmetics be safe and properly labeled, that foods be wholesome, and that drugs be effective. The Fair Packaging and Labeling Act 5/ requires that the labels for defined consumer commodities provide certain information so that consumers are able to easily determine the best value. 6/ The Radiation Control for Health and Safety Act of 1968 7/ protects consumers from unnecessary exposure to radiation emitted by consumer products.

| Prohibited Practices | Remedies |
|---|---|
| **A. Foods, Drugs, Cosmetics, and Medical Devices 8/** | |
| 1. Manufacture, importation, 9/ delivery into interstate commerce, or receipt of adulterated 10/ or misbranded 11/ foods, 12/ drugs, medical devices, or cosmetics, or adulteration of such products while in commerce. [21 U.S.C. §§331(a)(c)(g), 381(a)] | Administrative: If imported, denial of entry at customhouse, possible exportation or destruction [21 U.S.C. §381(a)]<br><br>Civil: Enjoin violations [21 U.S.C. §332(a)]; Seizure and condemnation [21 U.S.C. §334]<br><br>Criminal: First offense -- $1,000/one year; Subsequent offenses, or those committed with intent to defraud or mislead -- $10,000/three years 13/ [21 U.S.C. §333] |

| | |
|---|---|
| 2. Use of unfair or deceptive labeling 14/or packaging of foods, drugs, medical devices, or cosmetics. 15/ [15 U.S.C. §1451 et seq.; 16/ 21 U.S.C. §§331(b), 343(a), 352(a), 362(a)] | Administrative: See #1 [15 U.S.C. §1456(a); 21 U.S.C. §381(a)]<br>Civil: See #1<br>Criminal: See #1 [15 U.S.C. §1456] |
| 3. Offering foods or drugs for sale under the names of other products. [21 U.S.C. §§343(b), 352(i)(3)] | Same as #1 |
| 4. In the case of foods, 17/ use of deceptive labeling: | Same as #1 |
| a. Suggesting products are subject to FDA standards. 18/ [21 U.S.C. §343(g)] | |
| b. In imitation of nutritionally superior products. [21 U.S.C. §343(c)] | |
| c. Suggesting products are for special dietary use. [21 U.S.C. §343(j)] 19/ | |
| d. Concerning fat and cholesterol content, 20/ particularly as it relates to the control of heart or artery disease. [21 C.F.R. §101.25] | |
| e. Concerning margarine products. [21 U.S.C. §331(m)] 21/ | |
| 5. In the case of drugs, use of deceptive labeling: | Same as #1 |
| a. Suggesting FDA approval in certain particulars. [21 U.S.C. §331(l)] | |
| b. In imitation of other products. [21 U.S.C. §352(i)(2)] | |

| | |
|---|---|
| c. Concerning status as a recognized drug. [21 U.S.C. §352(g)] | |
| 6. Engaging in deceptive practices concerning the filling of packages 22/ containing foods, drugs, or cosmetics, or use of misleading containers for such products. [15 U.S.C. §1454(c)(4); 21 U.S.C. §§341(h), 343(d), 352(i)(1), 362(d)] | Same as #1 |
| 7. Failure to comply with label requirements concerning placement, form, and representations concerning quantity, 23/ ingredients, and nutritional information. 24/ [15 U.S.C. §§1453, 1454(c)(3); 21 C.F.R. §1.17] | Same as #1 |
| 8. Failure to include prescribed information on food, drug, medical device, or cosmetic labels. 25/ [21 U.S.C. §§343(e), 352(b),(e), 362(b)] | Same as #1 |
| 9. Failure to disclose that foods contain artificial flavoring, coloring, or chemical preservatives. 26/ [21 U.S.C. §341(k),(m)] | Same as #1 |
| 10. In the case of drugs, failure to: | Same as #1 |
| a. Provide adequate directions for use, plus appropriate warnings. [21 U.S.C. §352(f)] 27/ | |
| b. Disclose that drugs may be habit forming. [21 U.S.C. §352(d)] | |
| c. Properly label deteriorative drugs. [21 U.S.C. §352(h)] | |

| | |
|---|---|
| 11. Failure to disclose prescribed label information to the required degree of conspicuousness. [21 U.S.C. §§343(f), 352(c), 362(c)] 28/ | Same as #1 |
| 12. Deceptive or unauthorized use of FDA stamps or labels, or destruction of such stamps or labels. [21 U.S.C. §331(i),(k)] | Civil: Enjoin violations [21 U.S.C. §331(k) only] [21 U.S.C. §332(a)]; Seizure and condemnation [21 U.S.C. §334]<br>Criminal: See #1 |

B. Biological Products

| | |
|---|---|
| 1. Falsely labeling or marking packages or containers of biological products. [42 U.S.C. §262(b)] | Criminal: $500/one year [42 U.S.C. §262] |
| 2. Sale of biological products in the absence of all required label information. [42 U.S.C. §262(a)] 29/ | Same as #1 |

C. Hearing Aids 30/

| | |
|---|---|
| 1. Sale of hearing aid, unless a medical evaluation has first been obtained. [21 U.S.C. §360; 21 C.F.R. §801.421] | Civil: Enjoin violations [21 U.S.C. §332(a)]<br>Criminal: See #A1 |
| 2. Failure to include prescribed information on hearing aid labels. [21 U.S.C. §360; 21 C.F.R. §801.420] | Same as #1 |
| 3. Failure to provide a user instructional booklet, including care instructions and cautionary statements, with each hearing aid sold. [21 U.S.C. §360; 21 C.F.R. §801.421] | Same as #1 |

## D. Electronic Products

| | |
|---|---|
| 1. Manufacture, importation, 31/ or delivery of electronic products not conforming with federal radiation emission standards. [42 U.S.C. §263j(a)(1)] | Administrative: If imported, denial of entry at customhouse, possible exportation or destruction 32/ [42 U.S.C. §263h(a)]<br><br>Civil: Enjoin violations [42 U.S.C. §263k(a)]; Civil penalty to $300,000 for any related series of violations [42 U.S.C. §263k(b)(1)] |
| 2. Failure, by manufacturers, to repair, replace, or refund the cost of electronic products not in conformity with applicable federal standards. [42 U.S.C. §263j(a)(2)] 33/ | Civil: See #1 |
| 3. Falsely suggesting compliance with federal standards in required permanent labels or tags. [42 U.S.C. §263j(a)(5)] 34/ | Same as #1 |
| 4. Failure to affix permanent labels containing prescribed safety information to all microwave ovens. 35/ | Same as #1 |

## E. Clinical Laboratories

| | |
|---|---|
| 1. Engaging in business as a clinical laboratory, unless licensed by the Department of Health, Education & Welfare. [42 U.S.C. §263a(b)] | Civil: Enjoin violations [42 U.S.C. §263a(f)]<br><br>Criminal: $1,000/one year [42 U.S.C. §263c(h)] |
| 2. Misrepresentation by a licensed clinical laboratory as to the laboratory procedures it is authorized to perform. [42 U.S.C. §263a(e)] | Administrative: Limitation, suspension, or revocation of license [42 U.S.C. §263a(e)]<br><br>Civil, Criminal: See #1 |

## Footnotes

1. For a description of prohibited practices and remedies which relate to HEW's other components, see Department of Health, Education, and Welfare.

2. For example, the Department of Agriculture regulates the meat, poultry, and egg industries. The Federal Trade Commission polices false advertising of over-the-counter drugs; the FDA only regulates prescription drug advertising addressed to physicians. The FTC has also issued a guide for the cosmetic and toilet preparations industry, which is codified in 16 C.F.R. 221. Foods, drugs, cosmetics, and medical devices manufactured and sold solely within one state are normally subject only to state regulation. See also notes 5 and 8 infra.

3. These are the Bureau of Foods, Bureau of Drugs, Bureau of Veterinary Medicine, Bureau of Radiological Health, Bureau of Biologics, and Bureau of Medical Devices.

4. 21 U.S.C. §301 et seq. As to enforcement of the Food, Drug, and Cosmetic Act, see 21 C.F.R. 1.

5. 15 U.S.C. §1451 et seq.

6. Labeling of all consumer products other than foods, drugs, cosmetics, and medical devices is regulated by the Federal Trade Commission. 15 U.S.C. §1454(a).

7. 42 U.S.C. §§263b-263n.

8. False advertising of foods, drugs, cosmetics, and medical devices is regulated by the FTC. See Federal Trade Commission, #D1.

9. A separate statute also prohibits the importation of adulterated food products, and additionally empowers the President to suspend such importation. 21 U.S.C. §18. Similarly, the importation of tea which is inferior as to purity, quality, and fitness for consumption is specifically proscribed elsewhere. 21 U.S.C. §41. See also 21 C.F.R. 1220.

10. "Adulterated food" defined: 21 U.S.C. §342; "adulterated drugs and devices" defined: 21 U.S.C. §351; "adulterated cosmetics" defined: 21 U.S.C. §361.

11. "Misbranded food" defined: 21 U.S.C. §343; "misbranded drugs and devices" defined: 21 U.S.C. §352; "misbranded cosmetics" defined: 21 U.S.C. §362. See also 21 U.S.C. §§341-348 and 21 C.F.R. 100-199 (foods); 21 U.S.C. §§351-360b and 21 C.F.R. 200-299, 300-499, 801, 809 (drugs and devices); 21 U.S.C. §§361-364 and 21 C.F.R. 700-740 (cosmetics).

12. As regards the manufacture or shipment of milk, cream, or skimmed milk containing fat other than milk fat, called "filled milk," see 21 U.S.C. §62. In such instances, a criminal penalty of up to $1,000 or one year in prison, or both, may be invoked. 21 U.S.C. §63.

13. Where the FDA feels criminal prosecution is warranted, prospective defendants must first be given notice and an opportunity to appear at an informal hearing. 21 U.S.C. §335.

14. "Label" defined: 15 U.S.C. §1459(c); 21 C.F.R. §1.3(b). As regards misleading labeling, see 21 C.F.R. §1.21.

15. The labeling of most products other than foods, drugs, cosmetics, or medical devices is regulated by the Federal Trade Commission. 15 U.S.C. §1456(b).

16. For example, 15 U.S.C. §1454(c)(2) prohibits deceptive labeling which suggest price reductions or savings based upon package sizes or quantity of contents. See also 21 C.F.R. §§1.31 (package size savings representations), 1.35 ("cents off" and other savings representations).

17. Labeling requirements for specific food products are found throughout 21 C.F.R. 100-199.

18. This provision does not apply to butter, cheese, or ice cream. 21 U.S.C. §343(k).

19. See 21 C.F.R. 105. See also 41 Fed. Reg. 23,244, 46,158 (1976), as to labeling and composition requirements pertaining to dietary supplements; DHEW Publication No. (FDA) 74-2036, The New Look in Food Labels 2,3.

20. If cholesterol or fat information is provided, full nutritional labeling and a prescribed notice as to the cholesterol content must be included.

21. See also 21 U.S.C. §347(b),(c); 21 C.F.R.§166.40.

22. "Package" defined: 15 U.S.C. §1459(b).

23. See 16 C.F.R. 500, 503; 21 C.F.R. 1, #101.

24. Nutritional labeling is optional for most foods. But, if a nutrient is added or a nutritional claim is made in advertising or labeling, labels must include full nutritional information. DHEW Publication No. (FDA) 74-2036, supra, at 2. See generally DHEW Publication No. (FCA) 74-2042, Nutrition Labels and U.S. RDA.

25. See, e.g., HEW Publication No. (FDA) 74-3014, which describes the required content of over-the-counter and prescription drug labels.

26. See note 18 supra.

27. See 21 C.F.R. §201.5.

28. See 21 C.F.R. §§101.15 (foods), 201.15 (drugs).

29. See also 19 C.F.R. §12.21 et seq.

30. The Federal Trade Commission, also involved with hearing aids, has conducted its own rulemaking proceedings, although no final rules have been promulgated. Earlier, the FTC issued a guide for the hearing aid industry, codified in 16 C.F.R. 214.

31. See also 21 C.F.R. §1005.3.

32. Televisions offered for import which do not meet the prescribed standards are destroyed if not exported within 90 days, unless the FDA grants permission to correct the violations. HEW Publication No. (FDA) 76-8041.

33. See also 42 U.S.C. §263g(f); 21 C.F.R. §1004.1.

34. See also 42 U.S.C. §263f(h).

35. Such labels or tags must be prominently displayed on all microwave ovens manufactured after October 3, 1975. This requirement was added to a standard which took effect in 1971 which established a limit on the amount of radiation which could escape from such products and required that the door have a safety interlock system which would shut off the oven automatically if opened during use. DHEW Publication No. (FDA) 76-8019.

XIX. DEPARTMENT OF HEALTH, EDUCATION, & WELFARE

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## XIX. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (1953)

The Department of Health, Education, and Welfare (HEW) is a cabinet level department 1/ which administers, through a large number of agencies and offices, 2/ more than 300 programs, 3/ for which it receives a budget which is larger than that allocated to any other federal department. Some 90% of that budget goes to grants, loans, and other assistance to individuals, states, localities, private research groups, and educational institutions. 4/ Many of HEW's programs are targeted to serve particularly vulnerable groups, such as children, the aged, the disabled, and the poor; other programs, such as many in the health field, benefit the general public.

Several HEW programs deal with consumer deception issues. These include HEW-funded federal health insurance (Medicare) for the aged and disabled, and several loan programs created to assist students in attending colleges and trade and technical schools. The latter either subsidize eucational institution lenders or provide federal loan insurance on student loans made by private lenders.

| Prohibited Practices | Remedies |
|---|---|
| **A. Health Care--Aged and Disabled 5/** | |
| 1. Failure, by providers of health services or supplies, 6/ to substantially comply with all provisions of their agreements with HEW as well as applicable statutes and regulations, or to continue to qualify as providers. [42 U.S.C. §1395cc(b)(2)(A)-(C)] | Administrative: Termination of agreement with provider [42 U.S.C. §1395cc(b)(2)] |
| 2. Making, by providers or health care practitioners, of any false statement or representation of a material fact in or related to an application for payment for services or supplies. [42 U.S.C. §§1395y(d)(1)(A), 1395cc(b)(2)(D); 42 C.F.R. §405.315a(b)(1)] | Administrative: Termination of agreement with provider [42 U.S.C. §1395cc(b)(2); Exclusion of health care practitioner from reimbursement [42 U.S.C. §1395y(d)(1)] |
| 3. Making of any false representation by providers seeking payment from HEW. [42 U.S.C. §1395nn(a)] | Criminal: $25,000/five years [42 U.S.C. §1395 nn(a)] |

| | | |
|---|---|---|
| 4. | Submission, by providers, of requests for payment of amounts which substantially exceed the costs incurred. [42 U.S.C. §1395cc(b)(2)(E)] | Same as #1 |
| 5. | Furnishing, by health care practitioners, of services which are substantially in excess of their customary charges for such services or the costs incurred. [42 U.S.C. §1395y(d)(1)(B); 42 C.F.R. §405.315a(b)(2)] | Administrative: Exclusion from reimbursement [42 U.S.C. §1395y(d)(1)] |
| 6. | Furnishing, by providers or health care practitioners, of health services or supplies which are unnecessary, or which are of a quality which fails to meet professionally recognized standards of health care. [42 U.S.C. §§1395y(d)(1)(C), 1395cc(b)(2)(F); 42 C.F.R. §405.315a(b)(3)] | Same as #2 |
| 7. | Making of any misrepresentation with respect to the operations of any facility in order to qualify as a hospital, skilled nursing facility, or home health agency. 7/ [42 U.S.C. §1395nn(c)] | Criminal: $25,000/five years [42 U.S.C. §1395nn(c)] |
| 8. | Acceptance, by physicians or other suppliers of covered services, of assignment of beneficiaries claims for reimbursement, unless certain requirements are met concerning charges and other matters. [42 U.S.C. §1395u(b)(3)(B)(ii); 42 C.F.R. §§405.251(b), 405.1675] | Administrative: Suspension of right to accept assignments |

## B. Student Loans

| | | |
|---|---|---|
| 1. | Making of any misrepresentation, by an educational institution, concerning the nature of its programs or charges, or the employability of its graduates. 8/ [20 U.S.C. §1088f-1(c)] | Administrative: Suspension or termination of eligibility to participate in federal student loan programs [20 U.S.C. §1088f-1(c)] |
| 2. | Imposition of improper charges, including interest in excess of 7% per annum, failure to include prescribed terms, or improper assignment, by private lending institutions 9/ making federally-insured student loans. 10/ [20 U.S.C. §§1077, 1079(d)] | Administrative: Denial of federal insurance for the loan in question [20 U.S.C. §1077] |
| 3. | Imposition of improper charges, including interest in excess of 3% per annum, failure to include prescribed terms, or improper assignment, by institutions of higher education making NDSLP student loans. 11/ [20 U.S.C. §1087dd(c)(1)] | Administrative: Limitation, suspension, or termination of eligibility to participate in federal student loan programs [20 U.S.C. §1088f-1(a)(4); 45 C.F.R. §144.20] |
| 4. | Imposition of improper charges, including interest in excess of 7% per annum, failure to include prescribed terms, or improper assignment, in student loans in the health professions. [42 U.S.C. §294a] | Administrative: Limitation, suspension, or termination of eligibility to participate in federal student loan programs [42 U.S.C. §294 l (a)(3)] |
| 5. | Passing on, by vocational schools 12/ or institutions of higher education, of student loan expenses in the form of higher tuition or other charges. [45 C.F.R. §177.6 (e)(2)] | Administrative: Limitation, suspension, or termination of eligibility to participate in federal student loan programs [20 U.S.C. §1088f-1(a)(4); 45 C.F.R. 177]; Reimbursement or refund of ineligible or excessive interest, discounts, premiums, tuition, fees, etc. [45 C.F.R. §177.73] |
| 6. | Utilization, by educational institutions, of unfair refund policies as to unearned tuition, required fees, and room and board. [45 C.F.R. §177.63] | Same as #5 |

| | | |
|---|---|---|
| 7. | Failure, by vocational schools, to make reasonable determinations as to whether potential students have the ability to benefit from the instruction to be provided prior to the time they obligate themselves. [45 C.F.R. §177.65] | Same as #5 |

C. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Knowingly charging, collecting, or making an agreement to charge or collect a fee in excess of the maximum fee authorized for representation by attorneys and other persons regarding certain HEW programs. 13/ [30 U.S.C. §923(b); 42 U.S.C. §§906(a), 1383(d)(3)] | Administrative: Suspension or prohibition from representing claimants in HEW proceedings [30 U.S.C. §923(b); 42 U.S.C. §§406(a), 1383(d)(3)]<br>Criminal: $500/one year [30 U.S.C. §923(b); 42 U.S.C. §§406(a), 1383(d)(3)] |
| 2. | Fraudulently deceiving, misleading, or threatening a claimant, prospective claimant, or beneficiary under certain HEW programs 14/ by word, circular, letter, or advertisement. [30 U.S.C. §923(b); 42 U.S.C. §§406(a), 1383(d)(3)] | Same as #1 |
| 3. | Charging or collecting, for services rendered in connection with related court proceedings, a fee in excess of the maximum fee authorized by the court. 15/ [30 U.S.C. §923(b); 42 U.S.C. §406(b)] | Criminal: $500/one year [30 U.S.C. §923(b); 42 U.S.C. §406(b)] |
| 4. | Knowing conversion, by any person, of a benefit to a use other than that of the person for whom the benefit was paid. 16/ [30 U.S.C. §923(b); 42 U.S.C. §§408(e), 1383a(4)] | Criminal: $1,000/one year [30 U.S.C. §923(b); 42 U.S.C. §§408(e), 1383a(4)] |

## Footnotes

1. As to the creation of HEW, see 42 U.S.C. §3501.

2. HEW's major operating components include the following: 1)Office of Human Development Services, serving the young, elderly, disabled, and other vulnerable groups--included are 13 operating units, such as the Office of Child Development and the Administration on Aging; 2) Public Health Service, concerned with virtually every aspect of health, contains six operating agencies, including the Food and Drug Administration (separately treated), National Institutes of Health, and the Alcohol, Drug Abuse, and Mental Health Administration; 3) Social Security Administration, which pays retirement, disability, and death benefits to insured persons and their dependents, and makes payments to the needy, aged, blind, and disabled under the Supplemental Security Income program; 4) Health Care Financing Administration, which assists the states in providing monetary, medical, and social services to those in need, including the Medical Services Administration, which administers the expenditure of federal funds in joint programs with states to provide medical assistance to low-income persons (Medicaid); 5) Education Division, with three components, including the Office of Education, which endeavors to foster the improvement of the quality and relevance of educational opportunity at all levels, including the administration of loan and grant programs which help many to attend college, trade, and technical schools; 6) Office of Consumer Affairs, which coordinates all federal consumer activities and generally seeks to aid and protect consumers (more fully discussed under Appendix A, Other Agencies); and 7) Office for Civil Rights, which administers and enforces HEW policies under a number of federal civil rights statutes.

3. DHEW Publication No. (OS)75-126, This is HEW 1 (1975).

4. Id. at 4.

5. See 42 U.S.C. §1395 et seq.; 20 C.F.R. §405.101 et seq. For general information, see HEW Publication No. (HCFA) 77-24901 (1977).

6. "Provider of services" defined: 42 U.S.C. §1395x(u).

7. These terms are also defined in 42 U.S.C. §1395x.

8. A similar regulation prohibits misrepresentation by vocational schools of several additional particulars. 45 C.F.R. §177.64.

9. These include credit unions. 20 U.S.C. §1084.

10. See 20 U.S.C. §1071 et seq.; 45 C.F.R. 177. The purpose of this legislation was to establish a student loan insurance program for students and to pay a portion of the interest on loans made to qualified students. 20 U.S.C. §1071.

11. "NDSLP" stands for the National Direct Student Loan Program, under which federal funds are provided to institutions of higher education to make low-interest student loans. See generally 20 U.S.C. §§1087aa-ff; 45 C.F.R. 144.

12. The Federal Trade Commission is heavily involved in the regulation of vocational (and home study) schools. In addition to devoting substantial resources to prosecuting such schools, the FTC has proposed regulations defining related unfair or deceptive acts and practices. See 40 Fed. Reg. 21,048 (1975); 4 Trade Reg. Rep. (CCH ¶38,039. See also 16 C.F.R. 254, which sets forth guidelines for such entities; a related enforcement policy statement is found in 5 Trade Reg. Rep. (CCH) ¶50,133.

13. These programs include the Social Security Retirement, Survivors and Disability Program, the Black Lung Program, and the Supplemental Security Income Program.

14. Id.

15. Id., except that this prohibition does not relate to the Supplemental Security Income Program.

16. See note 13 supra.

XX. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT (1965)

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B. Home Mortgage Loans..... 154

C. FHA-Insured Loans..... 156

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## XX. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (1965)

A cabinet level department, the Department of Housing and Urban Development (HUD) bears principal responsibility for meeting the nation's housing needs and improving and developing its communities. 1/ A number of HUD-administered programs and statutes provide protections to consumers in the sale or leasing of land and dwellings. 2/

HUD's Federal Housing Administration (FHA) insures private lending institutions against losses on mortgage and property improvement loans, including those for mobile homes, condominums, and subsidized housing. 3/ As a condition to the extension of FHA insurance, lenders must satisfy HUD requirements concerning interest rates and other terms of the loan agreement and sellers must offer property meeting FHA standards.

HUD protects buyers of undeveloped lots in other states against fraudulent and deceptive sales practices. Developers must file comprehensive registration statements with HUD and provide less detailed property reports to prospective purchasers, before an agreement is signed, to allow them to evaluate the land's habitability, e.g., the availability of water, sewage facilities, and utilities. 4/

HUD also requires that persons obtaining residential mortgage loans be provided with useful and timely information concerning the nature, procedures, and costs of real estate closing or settlement, 5/ including cost estimates and a copy of a HUD booklet describing settlement costs.

Mobile home construction and safety standards are also promulgated and enforced by HUD. 6/

| Prohibited Practices | Remedies |
|---|---|
| **A. Interstate Land Sales 7/** | |
| 1. Sale or lease of lots, unless a "statement of record" 8/ is registered and in effect as to such subdivisions. 9/ [15 U.S.C. §1703(a)(1)] | Administrative: Cease and desist order [15 U.S.C. §1718]; Order compelling compliance [15 U.S.C. §1718]<br><br>Civil: Enjoin violations [15 U.S.C. §1714(a)]<br><br>Criminal: $5,000/five years [15 U.S.C. §1717] |
| 2. Filing registration statements which are incomplete or inaccurate in any material respect. [15 U.S.C. §1706(b)] | Administrative: Suspension of registration [15 U.S.C. §1706(b), (d)]; 10/ Cease and desist order [15 U.S.C. §1718]; Order compelling compliance [15 U.S.C. §1718]<br><br>Civil, Criminal: See #1<br><br>Private: If the effective statement contains an untrue statement or omission of a material fast, any person acquiring a lot may file a civil lawsuit against the developer or agent for damages up to the sum of the purchase price of the lot, reasonable cost of improvements, or as otherwise prescribed. 11/ |
| 3. Sale or lease of lots, unless a property report 12/ containing prescribed information is provided to the prospective purchaser prior to the signing of any agreement. [15 U.S.C. §1703(a)(1)] | Administrative, Civil, Criminal: See #1<br><br>Other: Such transactions are voidable at the option of the purchaser. If the report was given less than 48 hours before signing, the purchaser has three days to cancel (and the agreement must so state). [15 U.S.C. §1703(b)] |

| | | |
|---|---|---|
| 4. | Improper use of property reports for any promotional purposes, i.e., use in the absence of an effective statement of record, or failure to use the report in its entirety, with all portions receiving equal emphasis and disclosure. [15 U.S.C. §1707(b)] | Administrative, Civil, Criminal: See #1<br>Private: See #2 |
| 5. | Use of false or misleading advertisements in the sale, lease, or offer of lots. 13/ [15 U.S.C. §1718; 24 C.F.R. §1715.5(a)] | Same as #1 |
| 6. | Failure to include a prescribed statement advising that the property report be read and stating that HUD passes no judgment on the worth of the property on all printed advertising matter. [15 U.S.C. §1718; 24 C.F.R. §1715.10] | Same as #1 |
| 7. | Falsely representing, in advertising or otherwise, that HUD approves or recommends the sale or lease of any particular lots, or approves or deems accurate any statement of record. [15 U.S.C. §§1707(b), 1716] | Same as #1 |
| 8. | Use of deceptive sales practices or schemes to defraud in the sale or lease of lots. [15 U.S.C. §§1703(a)(2), 1718; 24 C.F.R. §1715.25] | Same as #2 |
| 9. | Inclusion in contracts or agreements of provisions intended to waive compliance with these requirements. [15 U.S.C. §1712] | Administrative. Civil, Criminal: See #1<br>Other: Such provisions are void. [15 U.S.C. §1712] |

B. Home Mortgage Loans 14/

| | | |
|---|---|---|
| 1. | Failure, by lenders, at the time loan applications are made or within three days thereafter, to provide good faith estimates of the costs of settlement services likely to be incurred. [12 U.S.C. §2604(c); 24 C.F.R. §3500.6(a)] 15/ | |

| | | |
|---|---|---|
| 2. | Failure, by lenders, to use the HUD "Uniform Settlement Statement" in providing required disclosures to borrowers, or to permit inspection by borrowers of partly completed statements one day before settlement. [12 U.S.C. §2603; 24 C.F.R. §3500.10] 16/ | |
| 3. | Failure, by lenders, to provide borrowers with copies of the booklet Settlement Costs; A HUD Guide at the time a loan is made or within three days thereafter. 17/ [12 U.S.C. §2604(d); 24 C.F.R. §3500.6(a)] | |
| 4. | Giving or accepting a fee, kickback, or anything of value under an agreement that business will be referred to a specific person or entity. [12 U.S.C. §2607(a)] 18/ | Criminal: $10,000/one year [12 U.S.C. §2607(d)(1)]<br><br>Private: Any person whose business is referred may sue for damages equal to three times the amount of the fee or thing of value, plus costs and attorney's fees [12 U.S.C. §2607(d)(2)] |
| 5. | Giving or accepting any portion, split, or percentage of any charge made for rendering real estate services in connection with residential mortgage loans. [12 U.S.C. §2607(b)] 19/ | Criminal: See #4<br><br>Private: A borrower may sue for damages equal to three times the amount of the portion, split, or percentage, plus costs and attorney's fees [12 U.S.C. §2607(d)(2)] |
| 6. | Requirement, by lenders, that buyers deposit unreasonable amounts into escrow accounts in connection with loans. [12 U.S.C. §2609] | |
| 7. | Charging, by lenders, of fees for preparing statements required by this act or the Truth in Lending Act. 20/ [12 U.S.C. §2610; 24 C.F.R. §3500.12] | |

| | | |
|---|---|---|
| 8. | Requirement, by sellers, that buyers purchase title insurance from particular companies as a condition of sale. [12 U.S.C. §2608(a)] | Private: A buyer may sue for damages equal to three times the amount of the charges for such title insurance. [12 U.S.C. §2608(b)] |

C. FHA-Insured Loans

| | | |
|---|---|---|
| 1. | Failure, by sellers, to offer property which meets HUD standards. [24 C.F.R. §200.143(b)] | Administrative: Refusal to permit participation in loan insurance program [24 C.F.R. §200.190] |
| 2. | Failure, by lenders, to adhere to HUD requirements as to term, interest rate, and the like. [24 C.F.R. §200.143(a)] | Same as #1 |
| 3. | Failure, by builders of homes covered by FHA loan insurance, to honor the provisions of the required standard warranty. | Administrative: Compel compliance; Perform repairs and recover costs incurred from builder |

D. Mobile Homes 21/

| | | |
|---|---|---|
| 1. | Manfacture, sale, lease, or importation of mobile homes not conforming with applicable safety standards. 22/ [42 U.S.C. §5409(a)(1)] | Civil: Civil penalty to $1,000 per violation, up to $1,000,000 for any related series of violations [42 U.S.C. §5410(a)]; Enjoin violations [42 U.S.C. §5411(a)]<br><br>Criminal: $1,000/one year [42 U.S.C. §5410(b)] |
| 2. | Failure, by manufactures, to certify in writing, or false or misleading certification, that mobile homes conform to applicable safety standards. [42 U.S.C. §5409(a)(4)] | Same as #1 |
| 3. | Inclusion in contracts or agreements of provisions intended to waive compliance with these requirements. [42 U.S.C. §5421] | Other: Such provisions are void [42 U.S.C. §5421] |

E. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Deceptive use of any words or letters as part of a business name falsely suggesting HUD affiliation or authorization. [18 U.S.C. §709] | Civil: Enjoin violations [18 U.S.C. §709]<br><br>Criminal: $1,000/one year [18 U.S.C. §709] |

| | |
|---|---|
| 2. Falsely representing that repairs or improvements are required or recommended by HUD, or falsely suggesting, in advertisements or otherwise, HUD endorsement, authorization, inspection, appraisal, or approval of housing, businesses, or products. [18 U.S.C. §709] | Same as #1 |

## Footnotes

1. As to the establishment of HUD, see 42 U.S.C. §3532.

2. Other HUD programs provide rental subsidies, assist neighborhood rehabilitation and urban preservation, and provide flood insurance. HUD also enforces laws preventing discrimination in the sale or rental of housing. See 42 U.S.C. §3601 et seq.; 24 C.F.R. §§200.600-.640.

3. See the National Housing Act, 12 U.S.C. §1701 et seq.; 24 C.F.R. 200. The different types of programs included are summarized in 24 C.F.R. §§200.10-.39, and elaborated upon in 24 C.F.R. 201-244.

4. As to exempted transactions, see 15 U.S.C. §1702; 24 C.F.R. §§1710.10-.13.

5. Closing or settlement is the formal process by which the ownership of real property passes from the seller to the buyer.

6. See the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. §5401 et seq.; 24 C.F.R. 280. See also HUD, Buying and Financing a Mobile Home (1975).

7. See the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §1701 et seq.; 24 C.F.R. 1700, 1710 (land registration), 1715 (advertising, sales practices, posting of notices of suspension), 1720. It should also be noted that the Federal Trade Commission has devoted substantial resources to litigation in massive land fraud schemes prosecuted under the FTC Act.

8. See 15 U.S.C. §§1704-1706.

9. "Subdivision" defined: 15 U.S.C. §1701; 24 C.F.R. §1710.1(q).

10. See also 24 C.F.R. §1710.45

11. Interestingly, attorney's fees are not provided for prevailing plantiffs.

12. See 15 U.S.C. §1707; 24 C.F.R. §1710.110.

13. As regards advertising standards and guidelines, see 24 C.F.R. §1715.15.

14. See the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §2601 et seq.; 24 C.F.R. 3500 ("Regulation X").

15. See also 24 C.F.R. §3500.7.

16. See also 24 C.F.R. §§3500.8,.9.

17. At the time this section was researched, HUD was considering alternate proposals that would provide consumers with booklets at the time sales contracts are executed, instead of the later date of loan application. See 41 Fed. Reg. 23,620 (1976).

18. See also 24 C.F.R. §3500.14.

19. Id.

20. The Truth in Lending Act is discussed under Federal Reserve System.

21. The Federal Trade Commission regulates unfair and deceptive acts and practices relating to mobile homes, and has proposed regulations concerning sales and service of mobile homes. See 40 Fed. Reg. 23,334 (1975) (to be codified in 16 C.F.R. 441). See also Veterans Administration, #B2, 4, 7, 8.

22. But see 42 U.S.C. §5409(b).

XXI. DEPARTMENT OF THE INTERIOR (1849)

A. Transactions With Indians... 161

B. Indian Products..... 162

C. National Park Concessions... 162

## XXI. DEPARTMENT OF THE INTERIOR (1849)

The Department of the Interior (USDI), a cabinet level department, is "custodian" of public lands and resources.[1] It appraises, manages, conserves, and develops public land, park, mineral, water, wildlife, and power resources, and seeks to protect the environment.

The USDI administers statutes which protect Indian consumers living in American Indian Reservation communities. The Indian Arts and Crafts Board also promotes the economic welfare of Indians through the development of their arts and crafts.[2] The Board issues stamps and trademarks signifying that silver and turquoise products, woven fabrics, and handicrafts are made by Indians.

The USDI, in its management of National Park areas, encourages private food and accommodation concessions.[3] The agency is charged with assuring that concessioners charge reasonable prices.

| Prohibited Practices | Remedies |
|---|---|
| **A. Transactions With Indians** | |
| 1. Failure to reduce agreements between Indians and non-Indians to writing, to affix a definite time to include required information,[4] or to provide copies to all parties, or otherwise engaging in deceptive practices. [25 U.S.C. §81] | Administrative: Disapproval of contracts; Declare contracts null and void [25 U.S.C. §81]<br><br>Civil: Recovery of an amount determined by USDI [25 U.S.C. §81] |
| 2. Assignment of any such agreement if prescribed information is omitted.[5] [25 U.S.C. §84] | Administrative: Declare assignment invalid. [25 U.S.C. §84] |
| 3. Entry into or assignment of agreements with Indians without prior approval from the USDI and the Commissioner of Indian Affairs. [25 U.S.C. §§81, 84] | Administrative: Agreements--See #1; Assignments--See #2<br>Civil: See #1 |
| 4. Engaging in trade with Indians on reservations without a license [25 U.S.C. §§261, 262] [6] | Civil: Civil penalty to $500, plus forfeiture of all merchandise offered for sale [25 C.F.R. §251.3] |
| 5. Charging of unfair prices by licensed traders. [25 C.F.R. §251.22] | Administrative: Revocation of license |

| | | |
|---|---|---|
| 6. | Sale of goods which are not of merchantable quality. 25 C.F.R. §251.22 | Same as #5 |

B. Indian Products

| | | |
|---|---|---|
| 1. | Improper use of imitation of stamps or trade marks of genuiness issued by the Indian Arts and Crafts Board, concerning such items as silver and turquoise products, woven fabrics, and handicrafts. [18 U.S.C. §1158; 25 U.S.C. §305a] 7/ | Criminal: $500/six months [18 U.S.C. §1158] 8/ |
| 2. | Misrepresentation as to whether items are genuine Indian products or of a particular tribe or group. [18 U.S.C. §1159] | Criminal: $500/six months [18 U.S.C. §1159] |

C. National Park Concessions

| | | |
|---|---|---|
| 1. | Charging of unreasonable rates by concessioners. 9/ [16 U.S.C. §20b(a)-(c)] | Administrative: Nonrenewal of concessioner's contract 10/ [16 U.S.C. §20d] |

## Footnotes

1. 43 U.S.C. §1451.

2. 25 U.S.C. §§305, 305a.

3. 16 U.S.C. §20a.

4. Such information includes: names, addresses, and occupations of all parties in interest; the time when, place where, and purpose for which made; a description of what is to be done, with any conditions which are part of the agreement; and a clear statement of the time for which the agreement is to run.

5. The required information consists of the name, address, and occupation of the assignee, as well as the consent of the Secretary (USDI) and the Commissioner of Indian Affairs.

6. See also 25 C.F.R. 251.

7. See 25 C.F.R. 301, 304, 307, 308, 310. For example, in order to carry a certificate of genuiness as a Navajo All-Wool Woven Fabric, fabric must be made entirely of local wool, locally hand-spun, entirely woven on a Navajo loom, made by a member of the Navajo tribe working under conditions not resembling a workshop or factory, and be of the size indicated on the certificate signed by the licensee. 25 C.F.R. §307.4.

8. See also 25 C.F.R. §§304.1, 307.1, 308.1, 310.1.

9. The reasonableness of concessioners' rates and charges is to be judged by comparison with similar facilities outside the park. The charging of unreasonable amounts is prohibited by implication.

10. This conclusion is inferred: the cited provision states that renewal preference is to be accorded concessioners who have performed satisfactorily.

XXII. INTERSTATE COMMERCE COMMISSION (1887)

A. All Common Carriers..... 165

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C. Railroads..... 168

D. Water Carriers - Inland Waterways & Coastal..... 169

E. Household Movers..... 170

## XXII. INTERSTATE COMMERCE COMMISSION (1887)

The Interstate Commerce Commission (ICC), 1/ the oldest independent regulatory agency, has jurisdiction over interstate surface transportation services, including railroads, trucks, buses, inland waterway and coastal water carriers, 2/ express delivery companies, household movers, and freight forwarders. The ICC certifies various carriers, and requires that passenger fares, property shipping rates, and services provided be fair, reasonable, and publicly disclosed. Carriers must maintain sufficient insurance to protect their customers against death, bodily injury, or property loss due to carrier negligence.

| Prohibited Practices | Remedies |
|---|---|
| **A. All Common Carriers** | |
| 1. Failure to deliver goods on demand in the absence of a lawful excuse. [49 U.S.C. §88] | Criminal: If done knowingly or with intent to defraud -- $5,000/five years [49 U.S.C. §121] |
| 2. Falsely stating that the shipper has weighed, loaded, or counted the goods in question. [49 U.S.C. §§100, 101] | Criminal: See #1<br>Other: Such statements are null and void [49 U.S.C. §100] |
| 3. False description, by carriers, of goods shipped. [49 U.S.C. §102] | Same as #1 |
| 4. Engaging in fraudulent practices concerning bills of lading. [49 U.S.C. §121] | Same as #1 |
| 5. Violation of the Fair Credit Reporting Act 3/ by common carriers subject to ICC regulation. 4/ [15 U.S.C. §1681s(b)(4)] | Administrative: All powers usually exercised by the ICC [15 U.S.C. §1681s(c)]<br>Criminal, Private: See Federal Reserve System, #B1 |

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| 6. Violation of the Equal Credit Opportunity Act 5/ by common carriers subject to ICC regulation. 6/ [15 U.S.C. §1691c(a)(4)] | Administrative: All powers usually exercised by the ICC [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |
| 7. Violation of the Fair Debt Collection Practices Act by common carriers subject to ICC regulation. 7/ [15 U.S.C. §1692 l(b)(4)] | Administrative, Civil, Criminal: All authority conferred on the ICC by any law, except the promulgation of regulations [15 U.S.C. §1692 l(c)]<br><br>Private: See Federal Trade Commission, #I1 |

B. Motor Carriers 8/

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| 1. Carriage of passengers or property without an ICC certificate. [49 U.S.C. §306(a)] | Administrative: Order compelling compliance [49 U.S.C. §304(c)]; Fine of $100-500 for first offense, $200-500 for subsequent offenses [49 U.S.C. §332(a)]<br><br>[49 U.S.C. §332(a)]<br><br>Civil: Enforce administrative orders [49 U.S.C. §322(b)(1)]; Civil penalty of $500 per violation, plus $250 for each day a violation continues [49 U.S.C. §322(h)]<br><br>Private: Injured person may sue for enforcement, costs, and attorney's fees, but must post bond to protect against unwarranted suits [49 U.S.C. §322(b)(2)] |
| 2. Engaging in business as a contract carrier without an ICC permit. [49 U.S.C. §309(a)] | Same as #1 |
| 3. Sale, offer, or arrangement of transportation services without an ICC broker's license. [49 U.S.C. §311(a)] | Same as #1 |

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| 4. Use by brokers of carriers which do not possess required ICC certificates or permits. [49 U.S.C. §311(a)] | Administrative: Order compelling compliance [49 U.S.C. §304(c)]; Suspension or revocation of license [49 U.S.C. §312(a)]; Fine of $100-500 for first offense, $200-500 for subsequent offenses [49 U.S.C. §332(a)]<br><br>[49 U.S.C. §322(a)]<br><br>Civil: See #1 |
| 5. Provision of transportation services, unless a tariff is filed with the ICC. [49 U.S.C. §317(d)] | Administrative: Order compelling compliance [49 U.S.C. §304(c)]; Suspension or revocation of certificate, permit, or license [49 U.S.C. §312(a)]; Enforcement of a reasonable rate [49 U.S.C. §316(e)]; Fine of $100-500 for first offense, $200-500 for subsequent offenses [49 U.S.C. §322(a)]<br><br>Civil: See #1<br><br>Criminal: First offense--$200-500; Subsequent offenses--$250-2,000 [49 U.S.C. §322(c)] |
| 6. Charging fares, rates, or charges which are unreasonable or which exceed those filed with the ICC. [49 U.S.C. §§316(a),(d), 317(b)] | Same as #5 |
| 7. Engaging in unfair practices concerning the form and substance of tickets, carriage of property or baggage, or transportation facilities. [49 U.S.C. §316(a),(b)] | Same as #5 |

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| 8. Failure, by carriers, to safeguard customers against bodily injury, death, or loss of property caused by negligence. [49 U.S.C. §315] | Administrative: Same as #4, except that suspension or revocation relates to certificate or permit<br><br>Civil: See #1 |
| 9. Failure, by brokers, to insure customers by bond or other ICC-approved security. [49 U.S.C. §311(c)] | Same as #4 |
| 10. Failure, by carriers, to operate on regular routes between fixed termini, absent special authorization. [49 U.S.C. §§307, 308] | Administrative: Same as #4, except that suspension or revocation relates to certificate<br><br>Civil: See #1 |

C. Railroads

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| 1. Charging fares, rates, or charges which are unreasonable. [49 U.S.C. §§1(5), 4(1)] | Administrative: Cease and desist order; Order compelling compliance; Order awarding damages [49 U.S.C. §§15(1), 16(1)]<br><br>Civil: Enforcement of administrative orders awarding damages [49 U.S.C. §16(2)]; Civil penalty of $5,000 for failure to obey ICC order [49 U.S.C. §16(8)]<br><br>Private: Injured persons may sue for all damages sustained, plus attorney's fees; [49 U.S.C. §8]; Such persons may sue to enforce ICC orders for the payment of money, and recover attorney's fees [49 U.S.C. §16(2),(12)] |
| 2. Failure to maintain reasonable rules and practices with regard to car service. [49 U.S.C. §1(11)] | Same as #1 |

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| 3. Failure to conspicuously post prescribed information concerning schedules, charges, and other matters. [49 U.S.C. §6(1)] 9/ | Administrative: See #1<br><br>Civil: Enforce administrative orders awarding damages [49 U.S.C. §16(2)]; Civil penalty of $500 per violation, plus $25 for each day a violation continues; [49 U.S.C. §6(10)]<br><br>Private: See #1 |
| 4. Disclaimer of liability, by contract or otherwise, for losses suffered in the transport of property. [49 U.S.C. §20(11)] | Administrative, Civil: See #1<br><br>Private: Injured persons may sue for the actual losses suffered in federal or state court, plus attorney's fees [49 U.S.C. §§8, 20(11)]; Such persons may sue to enforce ICC orders for the payment of money, and recover attorney's fees [49 U.S.C. §16(2),(12)] |

D. Water Carriers -- Inland Waterways and Coastal

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| 1. Engaging in water transportation without an ICC certificate or permit. [49 U.S.C. §909] | Administrative: Order compelling compliance [49 U.S.C. §904(e)]<br><br>Civil: Enforce administrative orders [49 U.S.C. §916(b)]<br><br>Criminal: $500 per day [49 U.S.C. §917(a)] |
| 2. Charging fares, rates, or charges which are unreasonable. [49 U.S.C. §905] | Administrative: Order awarding injured party all damages sustained, plus attorney's fees [49 U.S.C. §908(d)]; Revocation of certificates or permits [49 U.S.C. §912a]<br><br>Civil: Enforce administrative orders for payment of damages [49 U.S.C. §908(e)]<br><br>Private: Injured persons may sue for all damages sustained, plus attorney's fees 10/ [49 U.S.C. §908(b)] |

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| 3. Giving, offering, soliciting, or accepting rebates or concessions. [49 U.S.C. §917(b),(c)] | Administrative, Civil: See #1<br><br>Criminal: $5,000 [49 U.S.C. §917(b),(c)] |

E. Household Movers 11/

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| 1. Provision of interstate moving services, unless a tariff is filed with the ICC. [49 U.S.C. §317(d)] | Administrative: Order compelling compliance [49 U.S.C. §304(c)]; Suspension or revocation of certificate, permit, or license [49 U.S.C. §312(a)]; Enforcement of a reasonable rate [49 U.S.C. §316(e)]; Fine of $100-500 for first offense, $200-500 for subsequent offenses [49 U.S.C. §322(a)]<br><br>Civil: See #B1<br><br>Criminal: See #B5 |
| 2. Charging rates which are unreasonable or which exceed those filed with the ICC, or which differ for identical services. [49 U.S.C. §316(a),(d)] | Same as #1 |
| 3. Refusal, upon request, to provide written price estimates based on actual inspection of the household by the mover. [49 C.F.R. §1056.8] | Administrative: See #1, except for enforcement of a reasonable rate<br><br>Civil: See #B1<br><br>Criminal: See #B5 |
| 4. Failure to provide a copy of the ICC Summary of Information for Shippers of Household Goods, or to furnish the mover's prior performance report, before an "order for service" is signed. [49 C.F.R. §1056.7] | Same as #3 |

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| 5. | Failure to prepare an "order for service" containing specified information, including estimated cost, agreed dates for pickup and delivery, itemized charges for special services, and signatures of both parties, or to provide a copy to the shipper well in advance of moving day. [49 C.F.R. §1056.9] | Same as #3 |
| 6. | Failure to pick up a shipment on the dates or during the period of time agreed upon in the "order for service." [49 C.F.R. §1056.12] | Same as #3 |
| 7. | Failure to execute a bill of lading at the time a shipment is picked up, including the preloading weight of the vehicle and place of delivery. [49 U.S.C. §319; 49 C.F.R. §1056.10] | Same as #3 |
| 8. | Refusal to do required weighing on certified scales at a location disclosed in the "order for service," in the presence of the customer if requested. [49 C.F.R. §1056.6] | Same as #3 |
| 9. | Failure to deliver a shipment at the agreed time, unless proper notification to the contrary is provided. [49 C.F.R. §1056.12] | Same as #3 |
| 10. | Giving of false or misleading information as to the reasons for delay in picking up or delivering shipments. [49 C.F.R. §1056.12(d)] | Same as #3 |
| 11. | Refusal to unload a shipment on payment of the estimated price, plus no more than 10% in the event an underestimate was made. 12/ [49 C.F.R. §1056.8(b)] | Same as #3 |

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| 12. Failure by movers, to take timely action on claims of loss or damage. 13/ [49 C.F.R. §1056.17] | Same as #3 |
| 13. Sale, by movers, of insurance to shippers. [49 C.F.R. §1056.15] | Same as #3 |

## Footnotes

1. The primary statute administered by the ICC, the Interstate Commerce Act, 49 U.S.C. §1 et seq., also created the agency. See 49 U.S.C. §11.

2. See also Federal Maritime Commission, which regulates offshore water carriers.

3. The Fair Credit Reporting Act is discussed under Federal Reserve System.

4. Although this Act is enforceable by the ICC as to water carriers on inland waterways and coastal waters, carriers operating on the oceans or Great Lakes, otherwise under Federal Maritime Commission jurisdiction, appear to be subject to enforcement by the Federal Trade Commission.

5. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

6. See note 4 supra.

7. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission.

8. As to excepted motor carriers, see 49 U.S.C. §303(b).

9. See also 49 U.S.C. §6(6); 49 C.F.R. 1303.

10. The injured party must choose between proceeding administratively or judicially. 49 U.S.C. §908(c).

11. See generally 49 C.F.R. 1056; ICC Form BOp 103, Summary of Information for Shippers of Household Goods (rev. 1974).

12. The consumer is to be afforded up to 15 days to pay any amount due in excess of the estimated damage.

13. See ICC Public Advisory No. 4, Lost or Damaged Household Goods. Prevention and Recovery (1972).

# XXIII. DEPARTMENT OF JUSTICE (1870)

## XXIII. DEPARTMENT OF JUSTICE (1870)

The Department of Justice (USDJ), a cabinet level department headed by the U.S. Attorney General, is the principal law enforcement arm of the U.S. Government. The USDJ's law enforcement functions are conducted by six divisions, Antitrust, Criminal, Civil, Civil Rights, Land and Water Resources, and Tax, and 94 local U.S. Attorneys' offices, with the assistance of several offices, such as the Federal Bureau of Investigation.

The USDJ enforces a wide variety of federal consumer protection statutes, including many primarily administered by other agencies. 1/ In many of these instances, only the USDJ is empowered to institute civil or criminal actions in federal courts, while the responsible agency is limited to investigating violations and recommending action to the USDJ. Specific civil and criminal remedies are found in appropriate statutes. The USDJ also enforces several statutes not administered by other agencies, which are described under XXXI, Miscellaneous Prohibitions.

## Footnotes

1. For example, the Consumer Affairs Section of the Antitrust Division is responsible for litigation arising under more than a dozen federal statutes, including the Food, Drug, and Cosmetic Act (see Food and Drug Administration), Consumer Product Safety Act (see Consumer Product Safety Commission), Federal Trade Commission Act (see Federal Trade Commission), and Truth in Lending Act (see Federal Reserve System).

XXIV. DEPARTMENT OF LABOR (1913)

Wage Garnishment.... 178

## XXIV. DEPARTMENT OF LABOR (1913)

A cabinet level department, the Department of Labor (DOL) is charged with generally promoting and developing the welfare and opportunities for wage earners in the United States. The scores of labor laws administered by the DOL guarantee decent working conditions, fair wages, nondiscrimination, workers' compensation, and unemployment insurance benefits, among others.

Although the laws administered by the DOL do not relate to consumer matters, one statute limits the amount of earnings 1/ which may be garnished and prohibits retaliatory termination because of wage garnishment. 2/ This, in turn, limits creditors' remedies as well as what they should be able to threaten in the course of debt collection. Therefore, the prohibited practices help delineate unreasonable collection tactics, which are often themselves subject to common law and statutory remedies outside the DOL.

| Prohibited Practices | Remedies |
|---|---|
| **Wage Garnishment** | |
| 1. Withholding of an employee's disposable earnings 3/ subject to garnishment in an amoun which exceeds the legal limits for any workweek or pay period. 4/ [15 U.S.C. §1673] 5/ | Administrative: Unspecified 6/ |
| 2. Discharge by an employer of an employee because the latter's earnings are subjected to garnishment. [15 U.S.C. §1674(a)] | Administrative: See #1<br>Civil: Suit seeking reinstatement of employee 7/<br>Criminal: $1,000/one year [15 U.S.C. §1674(b)]<br>Private: Individuals may file civil lawsuits 8/ |

## Footnotes

1. "Earnings" defined: 15 U.S.C. §1672(a).

2. See 15 U.S.C. §1671 et seq.; 29 C.F.R. 870; DOL, WHPC Publication 1279, The Federal Wage Garnishment Law--Basic Information (1970).

3. "Disposable earnings" defined: 15 U.S.C. §1672(b).

4. It is the position of the DOL that this prohibition applies to any person or entity which violates the statute, including courts and financial institutions.

5. See also 29 C.F.R. §870.10.

6. The statute states only that it is to be enforced by the Secretary of Labor, acting through the Wage and Hour Division of the Employment Standards Administration.

7. In Hodgson v. Consolidated Freightways, Inc., 503 F.2d 797 (9th Cir. 1974), 15 U.S.C. §1676 was held to provide a jurisdictional basis for a suit by the DOL seeking reinstatement of employees who were discharged for multiple wage garnishments.

8. Such a private right of action has been recognized by some courts. See Stewart v. Travelers Corp., 503 F.2d 108 (9th Cir. 1974).

XXV. NATIONAL CREDIT UNION ADMINISTRATION (1970)

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B. All NCUA-Insured Credit Unions..... 182

## XXV. NATIONAL CREDIT UNION ADMINISTRATION (1970)

The National Credit Union Administration (NCUA) is an independent regulatory agency which governs all federally-chartered credit unions. 1/

The NCUA grants charters to new federal credit unions, supervises established federal credit unions to insure sound operation, and periodically examines credit unions' financial condition and operating practices. In addition, it insures member accounts for up to $40,000 in all federal credit unions and in state-chartered credit unions electing to acquire such coverage. 2/

| Prohibited Practices | Remedies |
|---|---|
| **A. Federal Credit Unions** | |
| 1. Charging interest in excess of 1% per month on the unpaid balance of a loan, including all incidental charges. [12 U.S.C. §1757(5)] | Administrative: Suspension or revocation of charter [12 U.S.C. §1766(b)(1)]; Involuntary liquidation [12 U.S.C. §1766(b)(1)]<br><br>Private: Individuals may file civil lawsuits to recover all interest paid on such loans [12 U.S.C. §1757(5)] |
| 2. Failure to disclose in advertisements that member accounts are insured by the NCUA. [12 U.S.C. §1785(a)] 3/ | Administrative: See #1 |
| 3. Use of false advertisements or other misrepresentations concerning NCUA insurance. [18 U.S.C. §709] | Civil: Enjoin violations [18 U.S.C. §709]<br><br>Criminal: Business entity--$1,000; Individual--$1,000/one year [18 U.S.C. §709] |
| 4. Use of deceptive advertisements concerning services offered, contracts, investments, or financial condition. [12 C.F.R. §740.2] 4/ | Same as #2 |

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| 5. Failure to display a sign stating that member accounts are insured by the NCUA in each business office. [12 U.S.C. §1785(a)] 5/ | Same as #2 |
| 6. Violation of the Truth in Lending, Fair Credit Billing, or Consumer Leasing Acts. 6/ [15 U.S.C. §1607(a)(3)] | Administrative: All powers usually exercised by the NCUA [15 U.S.C. §1607(b)]<br><br>Criminal, Private: See Federal Reserve System, #A1<br><br>Other: See Federal Reserve System, #A10, D2, F4,5 |
| 7. Violation of the Fair Credit Reporting Act. 7/ [15 U.S.C. §1681s(b)(3)] | Administrative: All powers usually exercised by the NCUA [15 U.S.C. §1681s(c)]<br><br>Criminal, Private: See Federal Reserve System, #B1 |
| 8. Violation of the Equal Credit Opportunity Act. 8/ [15 U.S.C. §1691c(a)(3)] | Administrative: All powers usually exercised by the NCUA [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |
| 9. Violation of the Fair Debt Collection Practices Act. 9/ [15 U.S.C. §1692 l(b)(3)] | Administrative, Civil, Criminal: All authority conferred on the NCUA by any law, except the promulgation of regulations. [15 U.S.C. §1692 l(c)]<br><br>Private: See Federal Trade Commission, #I1 |

B. All NCUA-Insured Credit Unions

| | |
|---|---|
| 1. Extension of credit secured by real estate or a mobile home located in a designated flood hazard area, by any federally insured credit union, unless a written notice of such hazard is provided in advance of consummation. [12 C.F.R. §760.2] | Same as #A2 |

## Footnotes

1. The principle law administered by the NCUA is the Federal Credit Union Act, 12 U.S.C. §1751 et seq. A credit union is a privately-owned nonprofit cooperative association organized to aid its members in improving their economic situation through regular savings while establishing a source of credit at reasonable rates of interest. Federally-chartered credit unions may be formed by any group of seven or more persons with a common bond of occupation, association, or residence. See 12 U.S.C. §1753.

2. See 12 U.S.C. §1781.

3. See also 12 C.F.R. 740.

4. See also 12 C.F.R. §740.4.

5. See 12 C.F.R. §740.3.

6. The Truth in Lending, Fair Credit Billing, and Consumer Leasing Acts are discussed under Federal Reserve System.

7. The Fair Credit Reporting Act discussed under Federal Reserve System.

8. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

9. The Fair Debt Collection Practices Act is discussed under Federal Trade Commission.

XXVI. SECURITIES & EXCHANGE COMMISSION (1934)

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## XXVI. SECURITIES AND EXCHANGE COMMISSION (1934)

The Securities and Exchange Commission (SEC) 1/ is an independent regulatory agency concerned with the sale and trading of securities (stocks and bonds), including those sold "over-the-counter." 2/ Generally, the SEC directly regulates the activities of stock exchanges, brokers, dealers, and investment advisers and administers registration and periodic reporting requirements for securities offered and sold by corporations. 3/

The SEC administers several federal statutes which protect securities investors against deception. 4/ Significant requirements include the filing of registration statements for most securities sold in interstate commerce (which contain extensive financial and other information) and the furnishing of prospectuses to prospective investors, which disclose important information derived from the registration statements. The SEC registers securities brokers and dealers, investment advisers, and investment companies (a term which includes mutual funds). Misrepresentation and fraud are prohibited in connection with the offer, purchase, or sale of all securities, whether or not they are required to be registered. A number of consumer education pamphlets which describe the intricacies and risks of securities transactions are available from the SEC. 5/

| Prohibited Practices | Remedies |
|---|---|
| **Securities Transactions** | |
| 1. Use of any device, scheme, or artifice to defraud or obtain money or property by means of any untrue statement or omission of a material fact, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser in the offer or sale of any securities. [15 U.S.C. §77q(a)] | Administrative: Censure, suspension, or revocation of registration of broker or dealer [15 U.S.C. §78o(b)(4)]; Prohibition, temporarily or permanently, from serving as employee, director, or officer of a registered investment company [15 U.S.C. §80a-9]<br><br>Civil: Enjoin violations or compel compliance [15 U.S.C. §§77t(b), 77t(c)]; Require affirmative corrective action [by Caselaw]<br><br>Criminal: $10,000/five years [15 U.S.C. §77x]<br><br>Other: Agreements binding persons acquiring securities to waive compliance with the provisions of the Securities Act of 1933 are void [15 U.S.C. §77n] |

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| 2. Sale of securities where registration statements contain any untrue statement of material fact or omit a material fact required to prevent other statements from misleading. [15 U.S.C. §77k] | Private: Individuals purchasing securities may sue to recover damages; court may award costs and attorney's fees to the prevailing party [15 U.S.C. §77k]<br><br>Other: See #1 |
| 3. Use of the mails or any instrumentality of interstate commerce to employ any manipulative or deceptive device or contrivance in connection with the purchase or sale of any security. [15 U.S.C. §78j; 17 C.F.R. §240.10b-5] | Administrative: See #1<br><br>Civil: Enjoin violations [15 U.S.C. §78u(d)]; Require affirmative corrective action [by Caselaw]<br><br>Criminal: $10,000/five years; $500,000 if an exchange [15 U.S.C. §78ff(a)]<br><br>Private: By court decision, purchasers or sellers may recover damages for violations [17 C.F.R. §240.10b-5]<br><br>Other: Contracts in violation of any provision of the Securities Exchange Act of 1934 are void [15 U.S.C. §78cc(b)] |
| 4. Advertising or otherwise communicating regarding, though not purporting to offer for sale, a security for a consideration to be received from an issuer, underwriter, or dealer, without fully disclosing such expectation and the amount. [15 U.S.C. §77q(b)] | Civil, Criminal: See #1 |
| 5. Representing that the SEC has approved or passed on the merits or accuracy of any security, transaction, registration statement, or report. [15 U.S.C. §§77w, 78z] | Administrative: See #1<br><br>Civil: Enjoin violations [15 U.S.C. §§77t(b), 78u(d)]<br><br>Criminal: $10,000/five years; $500,000 if an exchange [15 U.S.C. §§77x, 78ff(a)] |

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| 6. Sale or offer of non-exempt securities in interstate commerce, unless a registration statement containing required financial and other information is in effect as to such securities. 6/ [15 U.S.C. §§77e(1), 77l(1)] | Administrative, Civil, Criminal: See #1<br><br>Private: Individuals may sue to recover the consideration paid, with interest, less the amount received on tender of the securities, or for damages if securities are no longer owned [15 U.S.C. §77k]<br><br>Other: See #1 |
| 7. Including any untrue statement of material fact in a registration statement covering securities to be offered to the public. [15 U.S.C. §77h(d)] | Administrative: Suspension of registration [15 U.S.C. §77h(d)] |
| 8. Failure to provide a prospectus meeting SEC requirements prior to or at the time registered securities are sold. [15 U.S.C. §77l(2)] | Private: See #6 |
| 9. Sale or offer of securities by means of a prospectus or oral communication which includes any untrue statement or omission of a material fact. [15 U.S.C. §77l(2)] | Private: See #6 |
| 10. Making or causing to be made a statement in any application, report, or document filed pursuant the requirements of the Securities Exchange Act of 1934, which statement is false or misleading with respect to a material fact. [15 U.S.C. §78r] | Private: Any person purchasing or selling a security in reliance on such a statement and at a price affected by the statement may sue for damages, plus attorney's fees [15 U.S.C. §78r] |
| 11. Failure, by brokers or dealers buying and selling securities in interstate commerce, to register with the SEC. [15 U.S.C. §78o(a)] | Civil: Enjoin violations [15 U.S.C. §78u(d)]<br><br>Criminal: $10,000/five years [15 U.S.C. §78ff(a)] |

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| 12. Failure, by investment advisers, to register with the SEC. [15 U.S.C. §80b-3] | Civil: Enjoin violations [15 U.S.C. §80b-9(e)]<br><br>Criminal: $10,000/five years [15 U.S.C. §80b-17] |
| 13. Offer or sale, by an investment company, of any interest in a security, by the means or instrumentalities of interstate commerce, unless the company is registered with the SEC. [15 U.S.C. §80a-7] | Civil: Enjoin violations; court may take possession of the company and its assets, and appoint a trustee to liquidate company [15 U.S.C. §80a-41(e)]<br><br>Criminal: $10,000/five years [15 U.S.C. §80a-48] |
| 14. Use, by an investment adviser, of any device, scheme, or artifice to defraud any client or prospective client, engaging in any transaction or course of conduct which operates as a fraud or deceit on any client or prospective client, or engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. [15 U.S.C. §80b-6] | Civil, Criminal: See #12<br><br>Private: Derivative suit for damages |
| 15. Representation by an investment adviser that his qualifications have been passed on, or by an investment company or investment adviser of sponsorship, recommendation, or approval, by the United States or any federal agency. [15 U.S.C. §80a-34, 80b-8(a)] | Administrative: See #1; Censure or suspension of registration of investment adviser [15 U.S C. §80b-3(e)]<br><br>Civil: Enjoin violations [15 U.S.C. §§80a-41, 80b-9(e)]<br><br>Criminal: $10,000/five years [15 U.S.C. §§80a-48, 80b-17] |
| 16. Making of untrue statements, by investment advisers or investment companies, concerning material facts or omissions in any registration, application, or required report. [15 U.S.C. §§80b-3(e), 80b-7] | Administrative: Censure, suspension, or revocation of registration [15 U.S.C. §§80a-8, 80b-3(e)]<br><br>Civil: Enjoin violations [15 U.S.C. §80b-9(e)]<br><br>Criminal: See #15 |

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| 17. Breach of fiduciary duty, involving personal misconduct by an officer, director, member of advisory board, investment adviser, depositor, or principal underwriter of an investment company. [15 U.S.C. §80a-35(a)] | Administrative: Prohibition from serving in such capacity [15 U.S.C. §80a-9]<br><br>Civil: Injunction against serving in such capacity and otherwise [15 U.S.C. §80a-35(a)]<br><br>Criminal: See #13<br><br>Private: Derivative suit for damages [by caselaw] |
| 18. Theft, conversion, or embezzlement of funds or assets of an investment company. [15 U.S.C. §80a-36] | Criminal, Private: See #17 |
| 19. Solicitation of proxies, except in compliance with information and fraud rules promulgated by the SEC. [15 U.S.C. §78n(a); 17 C.F.R. §240.14a-1 et seq.] | Civil, Criminal: See #11<br><br>Private: Suit for damages or other relief [by caselaw] |
| 20. Including conditions, stipulations, or provisions binding persons to waive compliance with the law. [15 U.S.C. §§77n, 78cc, 80a-46, 80b-15] | Other: Such provisions are void [15 U.S.C. §§77n, 78cc, 80a-46, 80b-15] |
| 21. Operation of ponzi or pyramid investment schemes. 7/ | Same as #1, 3, possibly #6 |
| 22. Violation of the Equal Credit Opportunity Act by securities brokers or dealers. 8/ [15 U.S.C. §1691c(a)(8)] | Administrative: All powers usually exercised by the SEC [15 U.S.C. §1691c(b)]<br><br>Civil, Private: See Federal Reserve System, #C1 |

## Footnotes

1. The SEC was created by the Securities Exchange Act of 1934, 15 U.S.C. §78d. For a general description of the SEC's functions, see SEC, The Work of the Securities and Exchange Commission (1974).

2. "Over-the-counter" securities transactions are those which take place outside the national securities exchanges.

3. "Investment adviser" defined: 15 U.S.C. §80b-2(a)(11).

4. E.g., the Securities Act of 1933, 15 U.S.C. §77a et seq., the Securities Exchange Act of 1934, 15 U.S.C. §77b et seq., the Investment Company Act of 1940, 15 U.S.C. §80a et seq., and the Investment Advisers Act of 1940, 15 U.S.C. §80b et seq.

5. One such pulication is entitled Investigate Before You Invest; another is cited in note 7 infra.

6. For a description of the information to be included in registration statements, see 15 U.S.C. §77aa.

7. Such plans are usually offered without being registered as securities with the SEC. However, court decisions have held that these schemes do in fact involve securities subject to SEC jurisdiction. Pyramid sales are also regulated by the Federal Trade Commission. For a description of how such schemes operate, see SEC, How to Avoid Ponzi and Pyramid Schemes.

8. The Equal Credit Opportunity Act is discussed under Federal Reserve System.

XXVII. DEPARTMENT OF TRANSPORTATION (1967)

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## XXVII. DEPARTMENT OF TRANSPORTATION (1967)

The Department of Transportation (DOT) is a cabinet level department created to assure the development and maintenance of a safe, efficient, and effective transportation system in the United States. 1/ Two of its eight operating components, the National Highway Traffic Safety Administration (NHTSA) and, in peacetime, the United States Coast Guard, 2/ administer laws which impact on consumer deception. 3/

The NHTSA attempts to reduce highway deaths, injuries, and financial losses associated with traffic accidents through development of federal safety laws. 4/ It also enforces federal requirements relating to motor vehicle odometers.

The U.S. Coast Guard, in its mission of saving lives and property on the high seas and navigable waters of the United States, enforces federal boating safety laws. 5/

| Prohibited Practices | Remedies |
|---|---|
| **A. Motor Vehicles and Tires 6/** | |
| 1. Manufacture, sale, or importation of new motor vehicles not conforming with federal safety standards. [15 U.S.C. §1397(a)(1)(A)] 7/ | Administrative: If imported, denial of entry at customhouse 8/ [15 U.S.C. §1397(b)(3)]<br><br>Civil: Enjoin violations [15 U.S.C. §1399(a)]; Civil penalty to $1,000 per violation, not to exceed $800,000 for any series of related violations [15 U.S.C. §1398(a)]<br><br>Private: Dealers or distributors receiving nonconforming vehicles may sue for rescission, damages, handling charges, court costs, and attorney's fees [15 U.S.C. §1400] |
| 2. Failure, by manufacturers, to meet specified automobile average fuel economy standards. 9/ [15 U.S.C. §§2002(a), 2007(1)] | Administrative: Civil penalty of $5.00 for each tenth of a mile per gallon by which the average fuel economy of automobiles manufactured during the model year is exceeded by the applicable standard, multiplied by the total number of vehicles manufactured during the model year [15 U.S.C. §2008(b)(1)] |

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| | Civil: Suit by U.S. Attorney General to collect unpaid penalties assessed by the DOT [15 U.S.C. §2008(b)(3)] |
| 3. Failure, by manufacturers, to equip new motor vehicles with tires meeting maximum load standards, or to permanently and conspicuously label new tires with prescribed information. 10/ [15 U.S.C. §§1421, 1422] | |
| 4. Failure, by manufacturers, to emboss or affix permanent vehicle identification numbers in new automobiles, or to permanently affix labels showing conformity with federal safety standards. 11/ [15 U.S.C. §1403; 49 C.F.R. §571.115] | Civil: Suit to enjoin violations and restrain sales [15 U.S.C. §1399(a)] |
| 5. Failure, by manufacturers, to affix labels disclosing specified information to windshields or side windows of new automobiles. 12/ [15 U.S.C. §1232] | Criminal: $1,000 per automobile [15 U.S.C. §1233(a)] |
| 6. Misrepresentation or deception, by manufacturers, in labels affixed to new automobiles. [15 U.S.C. §1233(b)] | Criminal: $1,000 per automobile [15 U.S.C. §1233(b)] |
| 7. Willful removal, alteration, or obliteration of labels affixed to new automobiles prior to delivery to purchaser. [15 U.S.C. §1233(c)] | Criminal: $1,000/one year, per automobile [15 U.S.C. §1233(c)] |
| 8. Failure, by motor vehicle manufacturers, to disclose performance and technical data to prospective purchasers. [15 U.S.C. §1401(d)] 13/ | Same as #4 |

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| 9. Failure, by dealers, to furnish a booklet containing the fuel economy of all automobiles for the model year upon request. 14/ [15 U.S.C. §§2006(b), 2007(3)] | Administrative: Civil penalty to $10,000 per violation [15 U.S.C. §2008(b)(2)]<br><br>Civil: See #2 |
| 10. Tampering with, resetting, or otherwise altering the odometer mileage reading of a motor vehicle. [15 U.S.C. §1984] | Administrative: Impound motor vehicles for up to 72 hours [15 U.S.C. §1990(a)]<br><br>Civil: Enjoin violations [15 U.S.C. §1990]; Civil penalty of $1,000 per violation, not to exceed $100,000 for any series of related violations [15 U.S.C. §1990b]<br><br>Criminal: $50,000/one year [15 U.S.C. §1990c]<br><br>Private: Individuals may file civil lawsuits for damages equal to three times the actual damages or $1,500, whichever is greater, plus costs and attorney's fees 15/ [15 U.S.C. §1989 ]<br><br>Other: State Attorneys General may sue to enjoin violations and for the damages to which individuals are entitled [15 U.S.C. §1990a] |
| 11. Failure to disclose the odometer mileage reading in writing 16/ before the sale of a motor vehicle. 17/ [15 U.S.C. §1988(a)(1); 49 C.F.R. §580.4] | Same as #10 |
| 12. Knowingly providing a false odometer mileage disclosure statement to a buyer. [15 U.S.C. §1988(b)] | Same as #10 |

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| 13. Failure to disclose that the actual mileage traveled by a motor vehicle is unknown, if the odometer reading is known to differ from such actual mileage. [15 U.S.C. §1988(a)(2); 49 C.F.R. §580.4(c)] | Same as #10 |
| 14. Failure, by automobile dealers, to provide required insurance cost information to prospective purchasers. 18/ [15 U.S.C. §1941(e); 49 C.F.R. §582.4] | Civil: U.S. Attorney General may sue to enjoin violations [15 U.S.C. §1947]; Civil penalty to $1,000 per violation, not to exceed $400,000 for any series of related violations [15 U.S.C. §1948(a)] |
| 15. Improper sale of regrooved tires or motor vehicles equipped with such tires. [15 U.S.C. §1424(a)] 19/ | Civil: U.S. Attorney General or any U.S. Attorney may sue to enjoin violations; Civil penalty to $1,000 per violation, not to exceed $800,000 for any series of related violations [15 U.S.C. §1424(b)] |
| 16. Failure, by manufacturers, to provide notice of subsequently discovered vehicle safety defects, or to remedy them without charge. 20/ [15 U.S.C. §§1411-1417] 21/ | Administrative: Order compelling compliance [15 U.S.C. §1416]<br><br>Civil: U.S. Attorney General or any U.S. Attorney may sue to enjoin violations; Civil penalty to $1,000 per violation, not to exceed $800,000 for any series of related violations [15 U.S.C. §1415] |
| 17. Rendering inoperative any device or element of design required by motor vehicle safety standards. 22/ [15 U.S.C. §1397(a)(2)(A)] | Civil: See #1 |

B. Boats 23/

| | |
|---|---|
| 1. Manufacture, sale, or importation of boats not conforming with federal safety standards. [46 U.S.C. §1461(a)(1)] | Administrative: Civil penalty to $2,000 per violation, not to exceed $100,000 for any series of related violations [46 U.S.C. §1484(c)] |

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|---|---|
| | Civil: Enjoin violations [46 U.S.C. §1485]; Civil penalty to $2,000 per violation, not to exceed $100,000 for any series of related violations [46 U.S.C. §1484(a)] |
| 2. Affixing of boat safety labels which are false or misleading. [46 U.S.C. §1461(a)(2)] | Same as #1 |
| 3. Failure to affix boat safety labels, or delivery, sale, or importation of boats lacking such labels. 24/ [46 U.S.C. §1456; 33 C.F.R. §181.7] 25/ | Administrative: Civil penalty of $500 per violation [46 U.S.C. §1484(c)]<br><br>Civil: Civil penalty of $500 per violation [46 U.S.C. §1485] |
| 4. Removal or alteration of boat safety labels. [33 C.F.R. §181.13] | Same as #3 |

## Footnotes

1. See the Department of Transportation Act, 49 U.S.C. §1651 et seq.

2. The U.S. Coast Guard is technically a branch of the Armed Forces, i.e., part of the Department of Defense.

3. Other DOT components include the Federal Aviation Administration, which regulates the safety and operational aspects of air transportation (the Civil Aeronautics Board, included in this survey, enforces laws regulating the economic aspects of air transportation) and the Federal Railroad Administration, which assures a safe and efficient railroad system (more germane aspects of railroad transportation are regulated by the Interstate Commerce Commission).

4. The Federal Highway Administration, also part of the DOT, is responsible for the improvement and development of the nation's highway system.

5. See the Federal Boating Safety Act of 1971, 46 U.S.C. §1451 et seq.

6. The Federal Trade Commission is also involved in these areas. For example, a pending trade regulation rule addresses used car sales abuses. See 41 Fed. Reg. 1,089, 2,100 (1976) (to be codified in 16 C.F.R. 455). The FTC has also issued tire advertising and labeling guides, which are codified in 16 C.F.R. 228.

7. See 49 C.F.R. 571.

8. This is accomplished through the cooperation of the U.S. Customs Service of the Department of the Treasury.

9. This requirement applies to automobiles manufactured in model years after 1977. 15 U.S.C. §2002(a) In meeting its responsibilities under this legislation, the DOT is to consult with the Department of Energy. 15 U.S.C. §2002(h),(i) As regards the calculation of average fuel economy, which is the province of the Environmental Protection Agency, see 15 U.S.C. §2003. The latter agency also prescribes the form and content of related labels which must be affixed to automobiles. See Environmental Protection Agency, #A1.

10. Tires must identify the manufacturer or retreader and state the composition of the material used in the ply of the tire; actual number of plies; maximum permissible load; and state (or use approved mark of) compliance with these standards. See also 49 C.F.R. 74. The DOT is also to cooperate with the industry and the Federal Trade Commission to eliminate deceptive and confusing tire nomenclature and marketing practices. 15 U.S.C. §1423.

11. See 49 C.F.R. 567. As to temporary exemptions and labeling requirements, see 15 U.S.C. §1410(b); 49 C.F.R. 555, particularly Section 555.9 (labeling).

12. Such labels must include the make, model, and serial number of the vehicle; its final assembly point; the name and location of the place of business of the dealer to whom it is to be delivered, the city or town at which delivery is to occur, and the method of transportation used in making delivery; the manufacturer's suggested retail price for the automobile and all included accessories or optional equipment; and manufacturer charges to the dealer for transportation to the delivery location. These labels may also include required information relating to fuel economy. See Environmental Protection Agency, #A1.

13. See 49 C.F.R. 575.

14. This booklet is prepared by the Environmental Protection Agency. 15 U.S.C. §2006(b)(1) As regards dealer availability of such fuel economy information, see 40 C.F.R. §§600.401-77 to .407-77.

15. In order to prevail in a private civil action, one must prove that the violation occurred "with intent to defraud." In practice, this has proved an obstacle to meaningful private enforcement.

16. Such written statements must include the: 1) odometer reading at the time of transfer; 2) date of transfer; 3) transferor's name and address; 4) identity if the vehicle (including make, model, and body type); and 5) vehicle identification number and last plate number. 49 C.F.R. §580.4. A form is prescribed for such disclosure. 49 C.F.R. §§580.4(d), .6.

17. Such disclosures are not required for those motor vehicles which weigh more than 16,000 pounds, are not self-propelled, or are more than 25 years old. 49 C.F.R. §580.5.

18. The insurance cost information to be provided by automobile dealers must reflect the differences in insurance costs for different makes and models of passenger vehicles based upon differences in damage susceptibility and crashworthiness, all in a form to be specified by the Secretary of the DOT. 49 C.F.R. §§582.4, .5.

19. See 49 C.F.R. §§569.1 et seq., 574.5 (labeling).

20. Such action is required for automobiles less than eight years old and tires up to three years old. The manufacturer may elect to repair, replace, or refund the purchase price, less depreciation. 15 U.S.C. §1414.

21. See also 49 C.F.R. 573 (defect reports), 577 (defect notification).

22. Rendering inoperative a safety belt interlock or continuous buzzer for the non-use of seat belts is excluded from this general prohibition. 15 U.S.C. §1397(a)(2)(C).

23. See also 33 C.F.R. 181, 183.

24. As regards the required content of boat safety labels, see 33 C.F.R. §181.15.

25. See 33 C.F.R. §§181.7, .9, .15, .17.

XXVIII. DEPARTMENT OF THE TREASURY (1789)

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## XXVIII. DEPARTMENT OF THE TREASURY (1789)

The Department of the Treasury (USDT), the cabinet level department that manages federal finances, collects taxes and duties; issues currency, coins, Government securities, and postage stamps; and supervises national banks.[1/] Of the USDT's numerous components, the three which are most directly involved in regulating practices affecting consumers are the Office of the Comptroller of the Currency, U.S. Customs Service, and Bureau of Alcohol, Tobacco, and Firearms (BATF).[2/]

The U.S. Customs Service[3/] involves itself in consumer issues through its enforcement of import and export laws at all United States ports of entry, and by cooperation with and enforcement of the regulations of other federal agencies as they relate to international trade.[4/] The BATF investigates serious criminal offenses involving illegal possession and use of firearms or explosives and traffic in illicit liquor, and also taxes and regulates the alcoholic beverage and tobacco industries. The Office of the Comptroller of the Currency, which administers laws regulating national banks, is treated under a separate heading.

| Prohibited Practices | Remedies |
|---|---|
| **A. Imported Products** | |
| 1. Importation of articles bearing false descriptions of origin, including representations suggesting manufacture in the United States or any other locality not the true country of origin, or other misrepresentations. [15 U.S.C. §§1124, 1125(a); 19 C.F.R §11.12(a)] | Administrative: Denial of entry at customhouse [15 U.S.C. §§1124, 1125(b); 19 C.F.R. §11.13(a)]<br>Private: Any person who feels he is or is likely to be damaged by the use of such false representations may file a civil action on his own behalf [15 U.S.C. §1125(a)] |
| 2. Failure to conspicuously mark any imported article with its country of origin. [19 U.S.C. §1304(a),(b)][6/] | Administrative: Require payment of additional 10% duty; hold pending proper marking or deposit of duty [19 U.S.C. §1304(c), (d)] |
| 3. Concealment, removal, or alteration of required marking as to country of origin. [19 U.S.C. §1304(e)] | Criminal: $5,000/one year [19 U.S.C. §1304(e)] |
| 4. Importation of consumer commodities in violation of the Fair Packaging and and Labeling Act [7/] [15 U.S.C. §1456(c)] | Administrative: Denial of entry at customhouse, possible destruction -- relabeling may be permitted if it will achieve compliance [15 U.S.C. §1456(c)] |

| Prohibited Practices | Remedies |
|---|---|
| **B. Alcoholic Beverages** | |
| 1. Engaging in any deceptive practice relating to the quantity, age, or manufacture of alcoholic beverages. [27 U.S.C. §205(e)] | Administrative: Suspension, revocation, or annulment of permits[8/] [27 U.S.C. §204(e)] |
| 2. Use of false or misleading labeling. [27 U.S.C. §205(e)] | Same as #1 |
| 3. Failure to adequately disclose the identity, quality, alcoholic content, net contents, and manufacturer, bottler, or importer. [27 U.S.C. §205(e)] | Same as #1 |
| 4. Alteration or removal of any mark, brand, or label. [27 U.S.C. §205(e)] | Same as #1 |
| 5. Making any misrepresentation as to endorsement or use of an alcoholic beverage by an organization. [27 U.S.C. §205(e)] | Same as #1 |
| 6. Use of deceptive advertisements of alcoholic beverages in radio broadcasting,[10/] newspapers, or other media. 27 U.S.C. §205(f) | Same as #1 |
| 7. Failure to properly mark packages containing alcoholic beverage products. 18 U.S.C. §1263 | Administrative, Civil: See #1<br>Criminal: $1,000/one year 18 U.S.C. §1263 |
| 8. Failure to properly mark packages of imported liquor. 18 U.S.C. §1263; 19 C.F.R. §12.38 | Administrative: Seizure and disposition 19 C.F.R. §12.38 [19 C.F.R. §12.38]<br>Criminal: $1,000/one year [18 U.S.C. §1263] |

## Footnotes

1. The USDT, through the U.S. Secret Service, also protects public officials, such as the President, candidates for office, and foreign officials.

2. Other examples of USDT operating components are the Internal Revenue Service (of which BATF was once a part), Bureau of Engraving and Printing, and Bureau of the Mint.

3. The U.S. Customs Service actually antedates the USDT, and is itself one of the oldest agencies in the U.S. Government.

4. For examples, see 19 C.F.R. 11, 12.

5. See 19 C.F.R. 133, #173.

6. See 19 C.F.R. 134.

7. As to general enforcement of the Fair Packaging and Labeling Act, see Federal Trade Commission, B.

8. The Secretary of the Treasury may compromise such liability upon payment of up to $500 per offense.

9. Id.

10. Cf. Federal Communications Commission, #A2.

XXIX. UNITED STATES POSTAL SERVICE (1971)

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## XXIX. UNITED STATES POSTAL SERVICE (1971)

The United States Postal Service (USPS), an independent establishment of the Executive Branch and the successor to the Post Office Department, provides mail and parcel delivery and related services. 1/ It includes the Postal Inspection Service, which has three basic responsibilities:

- The investigation of all violations of some 85 federal statutes relating to the USPS; 2/
- The protection of mail, postal funds, and property; and
- The internal audit of all USPS financial and non-financial operations.

Among the postal laws enforced by the USPS are those which protect the public from various types of fraud and deception involving use of the mails.

Not all mail-order sales transactions which result in complaints to the USPS are considered fraudulent. Complaints believed to arise from misunderstandings between the parties, vendor oversight, or poor business practices are resolved through complaint mediation by the Postal Inspection Service's Consumer Protection Program.

| Prohibited Practices | Remedies |
|---|---|
| **A. Schemes to Defraud and False Representations 3/** | |
| 1. Use of the mails in furtherance of any scheme to defraud or to obtain money or property by means of false or fraudulent representations. 4/ [18 U.S.C. §1341] | Administrative: Determinations as to mailability; Disposition of mail ruled nonmailable 5/ [39 U.S.C. §§3001, 3003; 39 C.F.R. 953]<br><br>Criminal: $1,000/five years 6/ [18 U.S.C. §1341] |
| 2. Use of fictitious names and addresses in connection with mail fraud schemes or other unlawful activity. 7/ [18 U.S.C. §1342] 8/ | Administrative: See #1 9/<br><br>Criminal: $1,000/five years [18 U.S.C. §1342] |

| | |
|---|---|
| 3. Use of schemes or devices for obtaining money or property through the mails by means of false representations. [39 U.S.C. §3005] | Administrative: Return mail to sender [39 U.S.C. §3005(a)(1)]; Prevent payment of postal money orders or notes [39 U.S.C. §3005(a)(2)]<br><br>Civil: Temporary detention of mail during or pending administrative proceedings [39 U.S.C. §3007] |
| 4. Simulation of bills or statements of account when solicitating orders, unless a prescribed notice of their real nature is included. 10/ [39 U.S.C. §3001(d)] | Administrative: See #1, 2 11/ |

B. Unordered Merchandise 12/

| | |
|---|---|
| 1. Mailing unordered merchandise. 13/ [39 U.S.C. §3009(a)] | Administrative, Civil: Same as under the Federal Trade Commission Act 14/ [39 U.S.C. §3009(a)]; See #A3<br><br>Criminal: See #A1<br><br>Private: Individuals may file civil lawsuits seeking restitution 15/<br><br>Other: Recipient may treat unordered items as gifts, and use or dispose of them without obligation [39 U.S.C. §3009(b)] |
| 2. Mailing bills or dunning communications relating to unordered merchandise. [39 U.S.C. §3009(c)] | Same as #1 |

## C. Mailed Threats or Defamatory Matter

| | | |
|---|---|---|
| 1. | Mailing threats to injure the property or reputation of the addressee or of another, the reputation of a deceased person, or threats to accuse the addressee or another of a crime (with intent to extort money or any other thing of value). 16/ [18 U.S.C. §876] | Criminal: $500/two years [18 U.S.C. §876] |
| 2. | Mailing envelopes imprinted with libelous, defamatory, or threatening matter. [18 U.S.C. §1718] 17/ | Administrative: See #A1, 3<br>Criminal: $1,000/one year. [18 U.S.C. §1718] |

## D. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Mailing lottery tickets or other items relating to games of chance. 18/ [18 U.S.C. §1302] | Administrative: See #A1<br>Civil: See #A3<br>Criminal: First offense--$1,000/two years; Subsequent offenses--five years [18 U.S.C. §1302] |
| 2. | Mailing information concerning the obtaining of foreign divorces. [18 U.S.C. §1714] 19/ | Administrative: See #A1<br>Criminal: $5,000/one year [18 U.S.C. §1714] |

## Footnotes

1. 39 U.S.C. §§201,403.

2. The power of the USPS to investigate postal offenses derives from 39 U.S.C. §404(7) and 18 U.S.C. §3061.

3. The Federal Trade Commission issued its own guide for the mail order insurance industry, codified in 16 C.F.R. 234.

4. Among the fraudulent promotions which may violate this statute are land fraud schemes offering nonexistent or grossly misrepresented homesites, lots in resort or vacation paradises, and oil-bearing property; franchise offers promising lucrative return to the franchise holder; work-at-home schemes; advance fee schemes, which collect commissions in advance from persons in need of capital loans which never materialize; investment schemes; pyramid sales schemes; and mail-order sales schemes.

5. As a matter of agency policy, the USPS does not utilize the administrative search and detention powers in 39 U.S.C. §3001. When probable cause is apparent, mail may be seized for evidentiary purposes under the authority of a search warrant obtained in accordance with Rule 41, Federal Rules of Criminal Procedure.

6. Where warranted by evidence procured in USPS investigations, criminal prosecutions are brought by the Department of Justice.

7. Although enacted as a separate statute, this practice is deemed by the USPS to be included in the general prohibition of 18 U.S.C. §1341.

8. See also Postal Service Manual ("P.S.M.") §123.44a. Chapter 1 of the P.S.M., which includes regulations setting forth restrictions on use of mail services, is available at all post offices, and is incorporated by reference into the Code of Federal Regulations itself. 39 C.F.R. §§111.1, .2.

9. See note 5 supra.

10. In order for such matter to be mailable, it must comply with several additional requirements. See P.S.M. §123.41.

11. See note 5 supra.

12. See Federal Trade Commission, n. 42.

13. Unordered merchandise must include a clear and conspicuous statement that it may be treated as a gift by the recipient. 39 U.S.C. §3009(b).

14. See Federal Trade Commission, #A1, for a description of the remedies which apply to violations of the FTC Act. Free samples, appropriately marked, and items mailed by charitable organizations seeking donations are excepted.

15. The right to file such private actions (but not for injunctive relief) was recognized by the U.S. Court of Appeals for the Ninth Circuit, following Cort v. Ash, 422 U.S. 66 (1975). Trade Reg. Rep. (CCH) ¶61,469.

16. The Federal Bureau of Investigation has investigative jurisdiction with respect to threats to kill, kidnap, or do bodily harm.

17. See also P.S.M. §123.44f.

18. This prohibition does not apply to certain mailings by state-operated lotteries and any mailings of newspapers of general circulation published within the states conducting the lotteries. 18 U.S.C. §1307; P.S.M. §123.42.

19. This prohibition is not actively enforced by the USPS, in accordance with Department of Justice policy. In United States v. Hiett, 415 F.2d 664 (5th Cir. 1969), 18 U.S.C. §1714 was declared unconstitutional.

XXX. VETERANS ADMINISTRATION (1930)

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## XXX. VETERANS ADMINISTRATION (1930)

The Veterans Administration (VA) is an independent agency which provides compensation and a wide range of benefits for veterans and their dependents and beneficiaries,[1] and coordinates other federal programs affecting veterans and their dependents.[2] The VA's educational assistance and home loan guarantee programs, and to a lesser extent health care programs, potentially impact on consumer deception.[3]

The VA provides educational assistance benefits for attendance by eligible persons in high school, college, vocational schools, and on-the-job apprenticeship training programs. Home loan guarantees, commonly referred to as "GI Loans," involve VA guarantees or insurance of repayment of loans made by private lenders (or direct loans in certain areas) for the purchase of homes, condominiums, and mobile homes or for home repairs and improvements.[4] In the health care area, the VA provides hospitalization, medical, and dental benefits, some of which may involve services provided by private practitioners or institutions, e.g., nursing homes.

| Prohibited Practices | Remedies |
|---|---|
| **A. Educational Institutions[5]** | |
| 1. Engaging in deceptive advertising, sales, or enrollment practices.[6] [38 U.S.C. §1796(a)] | Administrative: Disapproval of educational institution [38 U.S.C. §1796(a)] |
| 2. Charging veterans tuition in an amount which exceeds that charged non-veterans. [38 U.S.C. §1790(a)][7] | Administrative: Disapproval of educational institution [38 U.S.C. §1790(a)] |
| 3. Offering courses not approved by an appropriate agency. [38 U.S.C. §1772] [8] | Administrative: Disapproval of educational institution [38 U.S.C. §104]; Disapproval of enrollment [38 U.S.C. §1772] |
| 4. Offering courses not providing a specific vocational objective. [38 U.S.C. §1673] | Administrative: Disapproval of educational institution [38 U.S.C. §104]; Disapproval of enrollment [38 U.S.C. §1772] |
| 5. Imposition of an unfair refund policy regarding tuition, fees, and other charges, if a course is not completed. [38 C.F.R. §21.4255] | Administrative: Disapproval of educational institution [38 U.S.C. §104] |

| | |
|---|---|
| 6. Failure, by correspondence institutions, to disclose certain information, including that concerning termination and refunds, or to provide a copy of the agreement to the veteran when signed. [38 U.S.C. §1786] | Same as #5 |
| 7. Failure, by correspondence institutions, to give full refunds to veterans changing their minds within ten days, or to keep only an approximate pro rata share of the tuition, as fixed by the statute. [38 U.S.C. §1786] | Same as #5 |
| 8. Submission of false claims to the VA. [38 C.F.R. §§21.4006, .4202(b)] | Administrative: Disapproval of educational institution [38 U.S.C. §104]; Disapproval of benefits [38 C.F.R. §21.4006]; Disapproval of enrollment [38 C.F.R. §21.4202(b)]<br>Criminal: If payments are fraudulently accepted -- $2,000/one year [38 U.S.C. §3502] |

B. GI Loans

| | |
|---|---|
| 1. Use of unfair marketing practices in sales of homes to veterans, including sale of housing with substantial defects or failure to meet contract terms. [38 U.S.C. §1804(b)] | Administrative: Refusal to appraise property owned by seller, precluding participation in the GI Loan Program [38 U.S.C. §1804(b)] |
| 2. Use of unfair marketing practices in sales of mobile homes to veterans, including sale of mobile homes with substantial defects or failure to meet contract terms.[9/] [38 U.S.C. §1819(1)] 10/ | Administrative: Disapproval of mobile home site as acceptable for participation in the GI Loan program [38 U.S.C. §1804(b)] |

| | |
|---|---|
| 3. Failure, by sellers, to deposit eligible veterans' downpayments on new homes to be financed by GI Loans in escrow accounts. [38 U.S.C. §1806] | Same as #1 |
| 4. Offering to sell property or a mobile home which is unsuitable for dwelling, priced excessively, or beyond the veteran's means. [38 U.S.C. §§1810(b), 1819(e)] | Administrative: Disapproval of loan or guarantee [38 U.S.C. §§1810(b), 1819(e)] |
| 5. Offering property repairs, alterations, or improvements which do not substantially protect or improve basic livability or utility. [38 U.S.C. §1810(b)] | Administrative: Disapproval of loan or guarantee [38 U.S.C. §1810(b)] |
| 6. Failure, by builders of new homes, to give buyers a one-year warranty that construction is in substantial conformity with VA-approved plans and specifications. [38 U.S.C. §1805(a)] | Administrative: Suspension from participation in the GI Loan program |
| 7. Failure, by manufacturers of new mobile homes, to give buyers a one-year warranty against substantial nonconformity with VA standards, or failure to honor such warranty. [38 U.S.C. §1819(j)] 11/ | Administrative: Denial of guaranteed financing or direct loans [38 U.S.C. §1819(k)] |
| 8. Charging of interest by lenders on GI Loans in excess of that permitted by the VA. 12/ [38 U.S.C. §1803(c)(1)] | Administrative: Refusal to guarantee or insure any loans made by such lenders [38 U.S.C. §1804(d)] |
| 9. Wilfully engaging, by lenders or holders of guaranteed or insured GI loans, in any practices which are detrimental to the interests of veterans. [38 U.S.C. §1804(d)] | Same as #8 |

| | |
|---|---|
| 10. Charging, by lenders, of fees or charges not approved by the VA, including commission or brokerage fees to secure a GI Loan and a premium or penalty for prepayment. (38 C.F.R. §36.4312) | Same as #8 |
| 11. Refusal, by lenders, to extend the time for curing a default or to otherwise modify the terms of a GI Loan, if default is due to unemployment resulting from the closing of a federal installation. 13/ (38 U.S.C. §1816(b)) | Same as #8 |

C. Health Care -- Veterans

| | |
|---|---|
| 1. Failure, by private nursing homes caring for veterans, to meet VA physical and professional standards. (38 U.S.C. §620(b); 38 C.F.R. §17.51(b)) | Administrative: Disapproval of institution [38 U.S.C. §620(b)] |

## Footnotes

1. 38 U.S.C. §201.

2. 38 U.S.C. §220.

3. Other VA benefits include payments for military-related death or disability, pensions for death or total and permanent disability not related to military service, life insurance programs for veterans and service personnel, and other benefits, such as vocational rehabilitation and burial expenses. For a more complete listing and description of VA benefits, see VA 1S-1 Fact Sheet, Federal Benefits for Veterans and Dependents (1976) (which was in the process of being revised when reviewed).

4. See generally VA Pamphlet 26-4, Questions and Answers in Guaranteed and Direct Loans for Veterans (1976); VA Pamphlet 26-6, To the Home-Buying Veteran. A Guide for Veterans Planning to Buy or Build Homes With a GI Loan (rev. 1976).

5. The Federal Trade Commission is deeply involved in the regulation of vocational and home study institutions. See Department of Health, Education, and Welfare, n. 12.

6. The VA is to work cooperatively with the Federal Trade Commission in the investigation and evaluation of such deceptive practices. 38 U.S.C. §1796(b).

7. See also 38 C.F.R. §21.4202.

8. See also 38 U.S.C. §§1775, 1776.

9. The Federal Trade Commission regulates unfair and deceptive acts and practices relating to mobile homes and has proposed regulations concerning sales and service of mobile homes. See 40 Fed. Reg. 23,334 (1975) (to be codified in 16 C.F.R. 441) See also Department of Housing and Urban Development, #D1-3, n. 6.

10. See also 38 C.F.R. §36.4235.

11. See also 38 C.F.R. §§36.4231, .4254.

12. A similar prohibition exists as to GI Loans made to finance purchases of mobile homes. 38 U.S.C. §1819(e).

13. Similarly, a lender is prevented by the Soldiers' and Sailors' Civil Relief Act of 1940 from foreclosing on a GI Loan while a recalled veteran is in the service and for three months following discharge.

XXXI. MISCELLANEOUS PROHIBITIONS

A. Misrepresentation of Government Affiliation... 217

## XXXI. MISCELLANEOUS PROHIBITIONS

Most federal statutes which prohibit unfair or deceptive practices likely to adversely affect consumers have been previously described under an appropriate federal department or agency. A small number of relevant statutory provisions which are not related to any agency follow.

| | Prohibited Practices | Remedies |
|---|---|---|
| | **A. Misrepresentation of Government Affiliation** | |
| 1. | Making of any fraudulent representation, by advertisement or otherwise, suggesting affiliation with or approval by a federal agency. [18 U.S.C. §709] | Criminal: Business entities--$1,000; Individuals--$10,000/one year [18 U.S.C. §709]<br>Civil: On complaint by any agency, U.S. Attorney General may sue to enjoin violations [18 U.S.C. §709] |
| 2. | Falsely representing that money or property is solicited for the use of the United States. [18 U.S.C. §663] | Criminal: $5,000/five years [18 U.S.C. §663] |
| 3. | Demanding or obtaining money by pretending to be an officer or employee of the United States. [18 U.S.C. §912] | Criminal: $1,000/three years [18 U.S.C. §912] |
| 4. | Demanding or obtaining money by pretending to be an official of a foreign government. [18 U.S.C. §915] | Criminal: $5,000/ten years [18 U.S.C. §915] |
| 5. | Falsely suggesting that a communication used in debt collection or private detective services is from a federal agency. [18 U.S.C. §712] | Criminal: $1,000/one year [18 U.S.C. §712] |
| 6. | Misrepresentation of association with the American National Red Cross to collect money or material. [18 U.S.C §917] | Criminal: $500/one year [18 U.S.C §917] |

| | | |
|---|---|---|
| 7. | Misrepresentation of association with 4-H Clubs. [18 U.S.C. §916] | Criminal: $300/six months [18 U.S.C. §916) |
| 8. | Fradulent use of the Red Cross insignia or 4-H Club name or emblem. 1/ [18 U.S.C. §§706, 707] | Criminal: $250/six months [18 U.S.C. §§706, 707] |
| 9. | Unauthorized use of certain characters and slogans, including "Smokey Bear," "Woodsy Owl," "Johnny Horizon," and "The Golden Eagle Insignia." [18 U.S.C. §§711a, 714, 715] 2/ | Criminal: $250/six months [18 U.S.C. §§711, 711a, 714, 715] |
| 10. | Using any likeness of the Great Seal of the United States or the seals of the President or Vice President. [18 U.S.C. §713] | Criminal: $250/six months [18 U.S.C. §713]<br><br>Civil: On complaint by any agency, U.S. Attorney General may sue to enjoin violations [18 U.S.C. §713] |

B. Foods

| | | |
|---|---|---|
| 1. | Importation of any article used for human food or drink which is adulterated. [21 U.S.C. §18] | Administrative: President may issue a proclamation suspending importation of such articles [21 U.S.C. §18] |
| 2. | Falsely labeling any dairy or food product as to the place where it was produced or grown. [21 U.S.C. §16] | Criminal: $500 to $2,000 [21 U.S.C. §17] |
| 3. | Use of misbranded barrels in which apples are sold. 3/ [21 U.S.C. §22] | Civil: U.S. may sue to recover $1.00 and costs for each such barrel sold or offered for sale [21 U.S.C. §23] 4/ |

C. Gold and Silver Products 5/

| | | |
|---|---|---|
| 1. | Falsely stamping gold or silver products with words suggesting U.S. Government certification as to their quality. [15 U.S.C. §219] | Administrative: Seizure and forfeiture [15 U.S.C. §292]<br><br>Criminal: $5,000/one year [15 U.S.C. §293] |

| | | |
|---|---|---|
| 2. | Falsely marking or labeling gold or silver products as to their degree of fineness or quality. [15 U.S.C. §294] | Criminal: $500/three months [15 U.S.C. §298(a)]<br><br>Private: Customers and subsequent purchasers may sue to enjoin violations, and recover attorney's fees. However, a successful defendant may recover attorney's fees from the customer. [15 U.S.C. §298(b), (d)] |
| 3. | Falsely indicating degrees of fineness of gold or silver-plated products. [15 U.S.C. §297] | Same as #2 |

D. Other Prohibited Practices

| | | |
|---|---|---|
| 1. | Affixing or using false descriptions or representations, including false designations of origin, in regard to any goods or services entering interstate commerce. 7/ [15 U.S.C. §1125(a)] | Administrative: If imported, denial of entry at customhouse 8/ [15 U.S.C. §1125(b)]<br><br>Private: Any person who believes he is or is likely to be damaged by the use of any such false description or representation may file a civil action on his own behalf [15 U.S.C. §1124(a)] |
| 2. | Making or financing extensions of credit where it is understood nonpayment might result in harm to the person, reputation, or property of the debtor, or collection of extensions of credit 9/ by extortionate means. 10/ [18 U.S.C. §§892-894] | Criminal: $10,000/20 years [18 U.S.C. §§892-894] |
| 3. | Manufacture, importation, or packaging for sale or distribution of any cigarettes which fail to bear a prescribed health warning, which must be conspicuous, legible, and contrast with the rest of the package. 11/ [15 U.S.C. §1333] | Civil: U.S. Attorney General, through any U.S. Attorney, may sue to enjoin violations [15 U.S.C. §1339]<br><br>Criminal: $10,000 [15 U.S.C. §1338] |

| | | |
|---|---|---|
| 4. | Deception of prospective purchasers of public lands by locators. [18 U.S.C. §1861] | Criminal: $300/one year [18 U.S.C. §1861] |
| 5. | Knowingly selling phonograph records or other articles on which sounds are recorded which have forged or counterfeited labels. [18 U.S.C. §2318] | Criminal: First offense--$25,000/one years; Subsequent offenses--$50,000/two years [18 U.S.C. §2318] |
| 6. | Manufacture or sale of badges, identification cards, or other insignia of a design prescribed by a federal agency. [18 U.S.C. §701] | Criminal: $250/six months [18 U.S.C. §701] |
| 7. | Manfacture or sale of military medals or decorations, or those of veterans' organizations, or imitations thereof. [18 U.S.C. §§704, 705] 12/ | Criminal: $250/six months [18 U.S.C. §§704, 705] |
| 8. | Solicitation of political contributions from persons known to be eligible for or receiving relief authorized by Congress. [18 U.S.C. §604] | Criminal: $1,000/one year [18 U.S.C. §604] |
| 9. | Demanding or receiving money under threat of informing as to violation of any law of the United States. [18 U.S.C. §873] | Criminal: $2,000/one year [18 U.S.C. §873] |

## Footnotes

1. See 7 C.F.R. §8.4 as regards the 4-H Club emblem.

2. See 36 C.F.R. 271 ("Smokey Bear"); 36 C.F.R. 272 ("Woodsy Owl"); 43 C.F.R. §25.0-2 et seq. ("Johnny Horizon"); 43 C.F.R. §18.15 ("The Golden Eagle Insignia").

3. The Department of Commerce administers a virtually identical provision. See Department of Commerce, #B1.

4. This provision is identical to 15 U.S.C. §233.

5. Similar matters are also the subject of regulations issued and enforced by the Federal Trade Commission.

6. The standards of fineness for such products are found at 15 U.S.C. §§295, 296.

7. Although this provision was primarily intended to prevent unfair competition, the interests of consumers are also protected. The fact that it appears in the Trademarks chapter of Title 15 of the United States Code has not been viewed as restrictive as to its general applicability. Ames Pub. Co. v. Walker-Davis Publications, Inc., 372 F. Supp. 1 (D.Pa.1974). The section has, in fact, been held to include false advertising. Therefore, any person believing he is likely to be damaged by a false advertisement could conceivably file a private civil action in federal court under this provision.

8. See also Department of the Treasury.

9. "Extortionate extension of credit" defined: 18 U.S.C. §891(6).

10. The cited provisions were enacted primarily to curb the extortionate credit activities of organized crime. 18 U.S.C. §891 nt.

11. The Federal Trade Commission has long been concerned with the potential health hazards of cigarettes. An FTC Release dated September 22, 1955, provided cigarette advertising guides. 4 Trade Reg. Rep. (CCH ¶39,012; a proposed trade regulation rule, since suspended, would have regulated such advertising. See 35 Fed. Reg. 12,671 (1970); 36 Fed. Reg. 784 (1971). A trade regulation rule was also proposed relating to the health hazards in smoking cigarettes. 34 Fed. Reg. 7,917, 8,125 (1969). See also Federal Communications Commission, #C3, which concerns the broadcast advertising of cigarettes.

12. See 32 C.F.R. 507, as regards military medals or decorations.

## APPENDIX

## OTHER AGENCIES

Every major federal agency in the Executive Branch 1/ was examined in the course of this research. Many do not have significant responsibilities related to the prevention of consumer deception. A number of these agencies 2/ are briefly described below.

1. Commission on Civil Rights (1964)

The CCR is solely a fact-finding agency, and possesses no enforcement authority. It conducts hearings, investigations, and research into the denial of equal protection of the laws because of race, color, religion, sex, or national origin, in such areas as employment, housing, and education. Its findings and recommendations are submitted to the President and Congress; individual complaints are referred to other agencies possessing appropriate enforcement authority.

2. Equal Employment Opportunity Commission (1965)

The EEOC seeks to insure equal opportunity without regard to race, color, religion, sex, or national origin in hiring, promotion, wages, training, termination, and all other conditions of employment. EEOC jurisdiction includes most private employers and unions, state and local government agencies, and public and private educational institutions; it does not include federal agencies (which are regulated by the Civil Service Commission).

3. General Services Administration (1949)

The GSA purchases and distributes supplies used by the U.S. Government, stockpiles materials for national emergencies and disposes of government-owned surplus items. It also constructs and operates government buildings, publishes the Federal Register (which contains all proposed and final agency regulations), distributes federal consumer information, and operates the federal data processing program.

4. National Labor Relations Board (1935)

The NLRB administers laws relating to labor disputes, preventing and remedying unfair labor practices by employers and labor organizations, particularly protecting the right of employees to organize and to bargain collectively.

5. Office of Consumer Affairs

While OCA is an office in the Department of Health, Education, and Welfare, its director is the Special Assistant to the President for Consumer Affairs. The OCA: Coordinates the implementation of federal consumer protection activities and improves federal agency consumer complaint handling; provides assistance

to state and local governments in the promotion of consumer interests; works with business to develop voluntary industry consumer programs; conducts investigations, surveys, and research designed to identify consumer problems and concerns; handles individual consumer complaints, writing letters to merchants or referring cases to appropriate federal or state agencies; and fosters consumer education and disseminates information. The OCA also prepares a semi-monthly publication, Consumer News, which describes matters of national concern to consumers, particularly federal agency activity.

6. Pension Benefit Guaranty Corporation (1974)

The PBGC is a self-financing government corporation governed by a Board of Directors consisting of the Secretaries of Labor (Chairperson), Commerce, and the Treasury. It guarantees basic pension benefits in covered private plans if they terminate without sufficient assets. To accomplish this, most private benefit plans are required to subscribe to a PBGC termination insurance program. The PBGC also advises consumers who are considering establishing Individual Retirement Accounts (IRAs).

7. Small Business Administration (1953)

The SBA was created to aid, counsel, and protect the interests of small business. The SBA offers financial assistance, in the form of guaranteed direct or lender participation loans; procurement assistance, to assure that small business obtains a "fair share" of government contracts; management assistance; and advocates small business interests before other federal agencies and Congress. The SBA also licenses, regulates, and makes loans to small business investment companies, and enforces the Equal Credit Opportunity Act 3/ as to such entities.

8. Department of State (1789)

The oldest cabinet level department in the Executive Branch, the DOS formulates and executes the foreign policy of the United States, including the negotiation of treaties and agreements with other nations. The foreign policy determinations of the DOS can affect the availability and price of many consumer products. The DOS also issues passports to U.S. citizens for travel to foreign countries.

9. United States International Trade Commission (1974)

Originally created in 1916 as the United States Tariff Commission, the USITC conducts investigations, public hearings, and research and advises the President, Congress, and other federal agencies on international trade and tariffs. The USITC investigates whether unfair methods of competition or unfair acts are committed in the importation of foreign articles or their sale in the United States, to the detriment of domestic industry. In such instances, the USITC may act to exclude such articles or issue cease and desist orders proscribing such methods or acts. Other broad investigatory powers concern customs laws, volume of imports, and competition between foreign and domestic industry. In appropriate situations, findings by the USITC may lead to import relief action by the President or Department of the Treasury, e.g., the latter may impose a duty on imports as an "antidumping" measure.

## Footnotes

1. Several agencies in the Legislative Branch were also considered; none was deemed relevant to this survey. Examples of such agencies are the General Accounting Office, Government Printing Office, and Library of Congress. Quasi-official agencies, such as the Smithsonian Institution and the American National Red Cross, were also found to be outside the scope of this undertaking.

2. Other agencies in the Executive Branch include ACTION, Administrative Conference of the United States, American Battle Monuments Commission, Appalachian Regional Commission, Board for International Broadcasting, Commission on Fine Arts, Community Services Administration, Export-Import Bank of the United States, Federal Election Commission, Federal Mediation and Conciliation Service, Foreign Claims Settlement Commission of the United States, Indian Claims Commission, Inter-American Foundation, National Aeronautics and Space Administration, National Foundation on the Arts and the Humanities, National Mediation Board, National Science Foundation, National Transportation Safety Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Overseas Private Investment Corporation, Panama Canal Company, Postal Rate Commission, Railroad Retirement Board, Renegotiation System, Selective Service System, Tennessee Valley Authority, United States Arms Control and Disarmament Agency, and United States Information Agency.

3. 15 U.S.C. §1691c(a)(9). The Equal Credit Opportunity Act is discussed under Federal Reserve System.

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References are to departments or agencies and corresponding prohibited practices or footnotes

The abbreviations used in this index refer to the following:

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CFTC - Commodity Futures Trading Commission (V)
CPSC - Consumer Product Safety Commission (VII)
CSC - Civil Service Commission (III)
DOC - Department of Commerce (IV)
DOD - Department of Defense (VIII)
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